DOCUMENT RESUME

ED 042 242 EA 002 994

TITLE	1970 Cumulative ACIR State Legislative Program.
INSTITUTION	Advisory Commission on Intergovernmental Relations, Washington, D.C.
REPORT NO	M-48
PUB DATE	Aug 69
NOTE	545p.
AVAILABLE FROM	Advisory Commission on Intergovernmental Relations, Washington, D.C. 20575 (Single Copies Free)
EDRS PRICE	EDRS Price MF-$2.00 HC-$27.35
DESCRIPTORS	*City Government, Community Development, Comprehensive Districts, Equal Education, Financial Support, Health, Housing, *Special Programs, *State Aid, *State Legislation, *Taxes, Vocational Education, Water Resources

ABSTRACT

This reference aid for legislators and legislative service agencies contains proposals for State and local legislation concerning governmental organization, finance, urban affairs, planning and zoning, health, education, and water and land resources. (LLR)

ED0 42242

1970 Cumulative

ACIR
STATE LEGISLATIVE PROGRAM

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D. C. 20575
AUGUST 1969
M-48

ACIR

EA 002 994

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ACIR
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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
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FOREWORD

The Advisory Commission on Intergovernmental Relations is a permanent, national bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, State, and national levels of government. The Commission's membership, representing the legislative and executive branches of the three levels of government and the public at large, is listed on the inside of the front cover. Although created by Congress, the Commission does not speak for the Federal Government. Therefore, it should not be inferred that the Federal Government necessarily concurs in all recommendations of the Commission or in suggested State legislation to implement them.

The Commission recognizes that its contribution to strengthening of the federal system will be measured, in part, in terms of its role in fostering significant improvements in the relationships between and among Federal, State and local governments. It therefore devotes a considerable share of its resources to encouraging the consideration of its recommendations for legislative and administrative action by government at all levels.

ACIR recommendations for State action are translated into legislative language for consideration by the State legislatures. In addition to draft bills contained in previous editions of the State Legislative Program, this cumulative volume contains ten new proposals: The Strong Executive Budget statute was drafted to implement a recommendation in the Commission's report on *Fiscal Balance in the American Federal System.* The proposals on Official Maps, Planned Unit Development, and Mandatory Dedication of Parks and School Sites were suggested by the Commission in *Urban and Rural America: Policies for Future Growth,* as approaches States should consider in implementing policies for urban growth. The draft proposal on Prepaid Group Practice of Health Care was recommended in *Intergovernmental Problems in Medicaid.* The remaining new proposals were drafted to implement Commission recommendations in its latest report, *State Aid to Local Government.* The titles of proposals appearing for the first time are preceded by an identifying symbol in the table of contents.

Some of the proposals in this volume are based on existing State statutes and constitutional provisions. Initial drafts were prepared by the ACIR staff. Individual proposals, in many instances, were reviewed by State officials and others with special knowledge in the subject matter fields involved.

The Commission presents its proposals for State legislation in this volume in the hope that it will serve as a useful reference aid for State legislators, State legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Reprints of individual programs are available in "slip bill" form upon request. A complete list of current Commission publications will be found at the end of this volume.

The draft proposals in this volume are identified by code numbers which conform to an *Analytical Index to Suggest State Legislation (1941-1970)* prepared by the Council of State Governments. A summary that includes the first and second level subject matter classification to the Council's Analytical Index appears in the Appendix.

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12-11-00

REMOVAL OF CONSTITUTIONAL RESTRICTIONS ON LEGISLATIVE SESSIONS AND COMPENSATION

American State legislatures frequently have served as the focal point of State governmental reform. It is widely recognized that the modernization of State legislative machinery is imperative if the States are to be politically viable partners in the federal system, but progress in this area has been slow. The attempts of many State legislatures to equip and organize themselves to cope effectively with twentieth century problems, particularly the increasing needs and demands of their local governments, have been frustrated by constitutional provisions which were responses to nineteenth century conditions. Requirements for biennial sessions of limited length are symbolic of the variety of impediments to effective legislative action which still are found in many State constitutions.

Perhaps the most important element in the State legislative process is the continuity of the legislature's attention to State affairs. The amount of legislative time which may be devoted to policy issues varies greatly among the States. At the end of World War II, only four State constitutions provided for annual regular sessions. Presently, fifteen State legislatures have annual regular sessions, while seven others meet annually, with off-year sessions being limited primarily to budgetary or fiscal matters, but ordinarily with some provision for the consideration of other areas. In Tennessee, sessions held in odd-numbered years may be reconvened the following year if desired. At its 1968 session, the Ohio legislature passed a law providing for regular annual sessions. Constitutional amendments to provide a shift from biennial to annual sessions will be voted on in 1968 in at least four States – Idaho, Iowa, Utah, and Wisconsin.

States still holding biennial sessions should give serious consideration to the adoption of annual regular sessions of unlimited duration. This would strengthen the legislature's capacity to deal effectively with policy, program, administrative, and fiscal issues, and would facilitate its continuing oversight of the activities of the executive branch. By becoming more active, the legislature's public visibility also would be increased.

Closely related to the question of annual sessions is the problem of legislative compensation. Despite significant efforts in many States to increase the salary, per diem, and living expense allowances of legislators, the median compensation for the 1965-67 biennial period ranged from $6,025 to $8,300, based on compensation rates prevailing or authorized in 1966.

Inadequate compensation has eliminated some potential candidates who lacked sufficient financial resources to sustain them during their term of office. Severe financial hardships have also been placed upon many incumbent legislators.

The salutary features of annual sessions will fail to have maximum impact if legislative stipends fail to keep pace with the increases in the time, responsibilities, and prestige of State legislators which are implicit in a change to annual sessions. State legislators should be compensated on an annual basis in an amount commensurate with growing demands on their time.

Because of the close interrelationship between the length and frequency of sessions and increased compensation, it is suggested that the following two amendments, which are based upon the Michigan, Missouri, and New Jersey constitutions, should be considered together. The first provides for annual regular sessions of unlimited duration, and also offers a procedure by which either the governor or the legislature itself may call special sessions. Since the exact amount of the legislative stipend should not be frozen into a State constitution, the second amendment is advanced as a means of providing the necessary flexibility to enable the legislature to adjust the compensation of its members to amounts commensurate with the increases in their time, responsibilities, and prestige resulting from the adoption of annual sessions. However, the amendment also stipulates that these changes will not be applicable to the members during the term for which they are elected.

12-11-00

LENGTH AND FREQUENCY OF LEGISLATIVE SESSIONS

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirement.]

The [legislature] shall be a continuous body during the term for which the members of the more numerous house are elected. It shall meet as provided by law. The legislature may be convened in special session by the governor or, at the written request of a majority of the members of each house, by the presiding officers of both houses.

LEGISLATIVE COMPENSATION

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

Members of the legislative body shall receive an annual salary and such other compensation as may be prescribed by law, but no change in salary shall become effective until the next succeeding [legislature] [general assembly] convenes.

12-22-00

LEGISLATIVE APPORTIONMENT PROCEDURE

The actual formulas for apportioning seats in the legislative bodies of a state is a matter of individual state concern, subject to the limitations imposed by the United States Constitution. However, it is essential that state constitutions specifically provide procedures that will insure that the states themselves are in a position to comply with all constitutional requirements for periodic reapportionment of legislative bodies. The suggested constitutional amendment is designated to insure compliance with apportionment provisions of the state constitution.

The suggested amendment deals only with apportionment procedure and does not treat the substantive issues on the basis (population, political subdivision, etc.) of allocating state legislative seats nor questions involved in use of weighted voting, single- or multi-member districts, etc. The amendment directs the legislature to reapportion itself in accordance with constitutional requirements following each decennial census. In the event that the legislature fails to meet its responsibility, a nonjudicial, nonlegislative officer or board is directed to do the reapportioning. In both instances, the highest court of the state is given original jurisdiction to determine the constitutionality of the reapportionment plan.

The language of the suggested amendment is modeled after the provisions of the Oregon constitution, although it should be noted that at least 14 other states have specific constitutional provisions which are designed to insure periodic apportionment of at least one house of their state legislatures. Some of these states have removed responsibility for apportionment completely from the hands of the state legislature. Others have directed that an individual state official or a separate apportionment board undertake the apportionment only after the legislature itself has failed to enact a reapportionment law or failed to reapportion in accordance with the provisions of the state constitution.

Section 1 would spell out the formula for apportioning seats in the state legislature and the appropriate provisions should be inserted by each state. The formula should be as clear and as specific as possible in order to permit the state supreme court to determine easily whether the reapportionment statute complies with the state constitutional formulas. It may be best for a state constitution in defining "population" in its formula to express that definition in mathematical terms. The following two alternatives might be included at the appropriate place or places:

(a) The [population] of no [Senatorial or Representative] district shall deviate by more than ten (10) percent from the figure obtained by dividing the total [population] of the state by the number of [Senators or Representatives].

(b) [Senatorial and Representative] districts shall be established with appropriate boundaries so as to permit at least forty-five (45) percent of the total [population] of the state to elect fifty (50) percent of the state [Senators] and fifty (50) percent of the state [Representatives].

Section 2 directs the state legislature to reapportion itself in the first legislative session immediately following the decennial census of the United States. It should be noted that several states still require reapportionment, based on population, at intervals which do not coincide with the decennial census. This is a carryover from the 18th century when states themselves conducted censuses. Since state censuses are no longer taken, it is suggested that the timing of reapportionment be keyed to the federal census.

Section 3 gives the state supreme court original jurisdiction to determine whether a reapportionment statute enacted by the legislature complies with the provisions of the state constitution. Any qualified voter of the state can bring this question before the court within 30 days after enactment of the reapportionment. If the court finds that the reapportionment does not comply with the constitution, the court shall direct either the named state official or the apportionment board to reapportion the legislature in accordance with

the constitution. The court is also granted authority to review a reapportionment plan so prepared and if it is found that such plan does not comply with the constitution, the court is authorized to direct the named state official or apportionment board to make appropriate changes.

Section 4 authorizes the named state official or apportionment board to prepare a reapportionment of the state legislature where the legislature, by July 1st of the year of the first regular legislative session following a decennial census, has not enacted reapportionment legislation. Here again, such a reapportionment is subject to court review only if challenged by a qualified voter of the state.

Section 5 is to be used only if the state determines that an apportionment board, rather than a single state official, shall reapportion seats in the event that the legislature itself fails to do so. It would create the apportionment board and determine its membership. Two alternatives are presented. The first would consist of named state officials. Most states that have apportionment boards follow this approach. It is important to note that members of the judiciary should not be members of an apportionment board. This recommendation is made because the state supreme court is granted jurisdiction over cases involving apportionment. The second alternative for membership on the apportionment board is modeled after the provisions of the Missouri constitution.

Suggested Constitutional Amendment

***Section 1. Apportionment of Senators and Representatives.* (a) *Senators.* [Insert provisions for the apportionment of state senators.]**

(b) *Representatives or Assemblymen.* [Insert provisions for apportionment of house of representatives or assembly.]

***Section 2. Reapportionment Duty.* The number of senators and representatives shall, not later than [July 1st] at the first regular session of the legislature next following the decennial census conducted by the United States government, be reapportioned by the legislature in accordance with section 1 of this article.**

***Section 3. Jurisdiction of [State Supreme Court].* Original jurisdiction is vested in the [state court of last resort], upon the petition of any qualified voter of the state filed with the [clerk of the supreme court] within [30] days after enactment of a reapportionment measure, to review, in whole or part, any measure so enacted. If the [supreme court] determines that the measure complied with section 1 of this article, it shall dismiss the petition by written opinion within [30] days after the petition was filed and the legislation enacted shall become law upon the date of opinion. If the [supreme court] determines that the measure does not comply with section 1 of this article the measure shall be null and void and the court shall direct [the named state official] [the apportionment board] to prepare a reapportionment of the legislature in compliance with section 1 of this article and return its reapportionment to the [supreme court] within [30] days after referral by the court. The [supreme court] shall review the reapportionment thus returned and, if it is found to be in compliance with section 1 of this article, shall cause it to be filed with the governor within [30] days after the finding and it shall become law upon the date of filing. If the [supreme court] shall determine that the draft**

returned to it by the [named state official] [apportionment board] does not comply with section 1 of this article, the court shall return it forthwith, accompanied by a written opinion specifying with particulars wherein the draft fails to comply with the requirements of section 1 of this article. The opinion shall further direct the [named state official] [apportionment board] to correct the draft in these particulars and in no others and to file the corrected reapportionment with the governor within [30] days after issuance of the order, and it shall become law upon the date of filing.

Section 4. Failure of Legislature to Reapportion Itself. If the legislature fails to enact any reapportionment measure by [July 1st] of the year of the first regular session of the legislature next following a decennial census by the United State government, the [named state official] [apportionment board] shall make a reapportionment of the legislature in accordance to the provisions of section 1 of this article. The reapportionment so made shall be filed with the governor on or before [August 1st] of such year and shall become law, subject to [supreme court] review, upon date of filing.

Original jurisdiction is vested in the [supreme court], upon petition of any qualified voter of the state filed with the [clerk of the supreme court] within [30] days after any reapportionment made by the [named state official] [apportionment board] has been filed with the governor to review, in whole or part, any such reapportionment. If the court determines that the reapportionment thus made complies with the provisions of section 1 of this article it shall dismiss the petition by written opinion within [30] days after the petition was filed and the reapportionment shall become law upon the date of the opinion. If the [supreme court] determines that the reapportionment does not comply with section 1 of this article, said reapportionment shall be null and void and the [supreme court] shall return it forthwith to the [named state official] [apportionment board] accompanied by a written opinion specifying with particulars wherein the reapportionment fails to comply with section 1 of this article. The opinion shall further direct the [named state official] [apportionment board] to correct the reapportionment in those particulars and in no others and file the corrected reapportionment with the governor within [30] days after issuance of the order and it shall become law upon the date of filing.

Section 5. Apportionment Board. There is hereby created an apportionment board consisting of [named state officials; do not include members of the judiciary] [consisting of [two] members appointed by the chairman of the political party whose candidate for governor in the last preceding gubernatorial election received the largest number of votes, [two] members appointed by the chairman of the political party whose candidate for governor received the second largest number of votes at the last preceding gubernatorial election], [and one member who shall be chairman of the apportionment board, appointed by the aforementioned members]. [The apportionment board shall convene prior to [July 10th] of any year in which the legislature has failed to comply with its responsibility under section 2 of this article and reapportion the state legislature in accordance with the provisions of section 1 of this article. In that event the apportionment board shall, on or before [August 1st] of such year, reapportion seats in the state legislature in accordance with the provisions of section 1 of this article and file a copy of such reapportionment with the governor. Such reapportionment shall become law, subject to [supreme court] review, upon date of filing. In the event the [supreme court] shall declare that a reapportionment law enacted by the legislature fails to comply with the provisions of section 1 of this article the apportionment board shall convene within [10] days after the decision of the court and shall proceed to reapportion seats in the legislature as if no reapportionment action was taken by the legislature.][1] [The [secretary of state] shall be secretary of the apportionment board, and in that capacity shall furnish, under its direction, all necessary technical services.]

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[1] Some states may wish to include a provision here similar to that in the Michigan constitution which reads as follows: "If a majority of the [Board] cannot agree on a plan, each member of the [Board, individually or jointly with other members, may submit a proposed plan to the [Supreme Court]. The [Supreme Court] shall determine which plan complies most accurately with the constitutional requirement and shall direct that it be adopted by the [Board] and [published] as provided in this [article]."

12-30-00

YEAR-ROUND PROFESSIONAL STAFFING OF MAJOR STATE LEGISLATIVE STANDING COMMITTEES

A critical factor affecting the capacity of State legislative leaders, committees, and individual members to carry out their growing responsibilities is the availability of adequate staff assistance. In most States, active legislative participation in the framing of statewide programs is hampered by the shortage or absence of staff help. Too often State legislators are not kept fully informed concerning developments in Federal-State and State-local program relationships which might have an impact on future legislative decisions. Efforts by the State executive to keep the legislature advised of important developments experience, at best, only limited success.

The development of permanent legislative research agencies or councils in at least 44 States represents one attempt to fill at least partially the legislature's need for professional staff assistance. In a few States, the legislative councils provide some staff help to legislative committees between sessions. In other States interim committees are created and authorized to employ professional aides.

In 40 States, secretarial assistance is provided to all standing committees, but in the remaining States this aid is limited to committees on finance, appropriations, ways and means, and judiciary. Fiscal committees in all States have clerical assistance. In 13 States, some research assistance is provided to the general membership. Staff aid is furnished to legislative leaders in 32 States, and 22 of these States also provide some technical assistance to legislators. At the present time, only California and New York have all of their major legislative standing committees staffed on a year-round basis.

In most States, under the present circumstances, the legislature in general – and the major standing committees in particular – are ill equipped to deal effectively with national developments or with State and local problems. The staff of the legislative council or special interim committee often is overloaded with its usual interim assignments and unable to perform satisfactorily the added task of providing a full range of staff services for standing committees.

Much of this information gap could be bridged if the major standing committees of State legislatures were professionally staffed on a year-round basis, and if these staffs were made responsible for keeping abreast of major statewide issues and developments in Federal-State and State-local relations. In this way a great deal of valuable investigatory and preparatory work, including bill drafting, dealing with initiation of legislation, as well as budget review, analysis, and evaluation could be performed by legislative committees between sessions. Improving legislative information resources and communications channels should also generally strengthen the State legislature's capacity to develop programs and to exercise oversight of the executive branch.

To achieve this objective it may be advisable in some States to expand substantially the staff of the legislative council to provide the necessary additional personnel. In others it may be preferable to set up separate staffs for each of the major committees. The following concurrent resolution is offered as one means of providing year-round professional staff assistance for major legislative standing committees. General guidelines for the selection of staff members should include education, experience, and competence. Salary and compensation should be commensurate with the qualifications of and the responsibilities assigned to the professional staff and be competitive with other areas of the public service and the private sector. Finally, to provide continuity the tenure of the staff members should not be limited to a specified period; they should be employed as long as they continue to render satisfactory service.

12-30-00

CONCURRENT RESOLUTION

"Providing for Continuing Year-Round Professional Staffing of Major State Legislative Standing Committees."

WHEREAS, the scope and complexity of the problems of modern society, including urbanization, economic development, and population growth, have greatly increased the [legislature's] need for technical research and information service; and

WHEREAS, there is a need for the [legislature] to participate actively in the framing of statewide policies and Federal-State and State-local cooperative programs, as well as to keep abreast of the executive branch in maintaining complete, accurate, and current information concerning these areas; and

WHEREAS, there is a need for major legislative standing committees to be provided with year-round professional staff assistance to conduct research and provide other technical services during interim periods as well as during legislative sessions;

NOW, THEREFORE, BE IT RESOLVED, by the [legislature] of the state of [ ] [That major legislative standing committees, including but not limited to finance, ways and means, appropriations, and judiciary] shall be provided with professional staff personnel to serve on a year-round basis.

AND BE IT FURTHER RESOLVED, that these staff personnel shall be appointed by the [appropriate committees or officers of the respective houses] of the [legislature] on the basis of education, competence, and experience, rather than political affiliation, and shall remain in their positions so long as they continue to render satisfactory performance. Staff members shall receive salary and other compensation as determined by the [appropriate committees or officers of the respective houses] of the [legislature]. [Staff members shall be assigned to the chairman and ranking minority member of each committee.][1]

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[1] The legislative body may select all professional personnel on a strictly non-partisan basis, in which case appointment by committee chairmen or other appropriate officers of the legislature would be in order. However, if staffing is done by the Chairmen of individual committees, it may be desirable to provide for "minority staffing."

12-34-10

STATE LEGISLATIVE CONTACT WITH CONGRESS

Studies of the impact of Federal grant-in-aid programs on State government administration reveal that there is insufficient communication between members of Congress and State legislatures at the time that important policy decisions are being made. The witnesses appearing before congressional committees dealing with Federal legislation affecting the States and their local governments usually include a wide assortment of local officials and representatives of other interests. State administrative officials participate occasionally in these hearings, and governors testify from time-to-time. But State legislators seldom appear as witnesses before congressional committees. The traditional State legislative practice of presenting memorials to Congress is largely unsatisfactory as a form of communication on policy questions and in no sense is it an adequate substitute for direct dialogue with members of Congress.

A fuller interchange of views between key State legislators and members of congressional committees would strengthen the role of State legislatures in the formulation of important policies affecting the nation's domestic affairs. It would improve intergovernmental relations, and would assist congressional committees in their deliberations. Appropriate coordination of a State's legislative views with the views of the State's executive branch may be assured by advance consultation.

The following concurrent resolution suggests one method of formally instructing and authorizing State legislative leaders to make personal appearances before congressional committees when Federal programs significantly affecting their State are under consideration.

Concurrent Resolution

"Providing for State Legislative Contact with Congress"

WHEREAS, it is important that the legislature make known its views concerning the formulation, financing, and operation of Federal programs affecting the State and its political subdivisions; and

WHEREAS, a fuller interchange of views between state legislators and congressional committees is a necessary means of strengthening the state's role in the formulation of policy decisions affecting major areas of the nation's domestic affairs; and

WHEREAS, the legislature recognizes that there is no substitute for direct dialogue between members of the Congress and the legislature;

***NOW, THEREFORE, BE IT RESOLVED by the [legislature] of [insert name of state]:* That the presiding officers of the [legislature], the majority and minority leaders, and the chairmen of committees having jurisdiction in fields involving Federal-State relations, are authorized and directed to follow the development of proposed legislation in the Federal Executive Branch and the Congress and to present their views through personal testimony or by written statement to congressional committees considering new or modified Federal programs significantly affecting the state.**

AND BE IT FURTHER RESOLVED, that the presiding officers arrange meetings, in the state capital and in Washington, D.C., with the Members of Congress from this state, for the purpose of discussing matters affecting the state that are under consideration by Congress or that should be brought to the attention of Congress.

12-35-00

JOINT LEGISLATIVE COMMITTEE ON STATE PLANNING

While every State has some planning capability, support for State planning varies widely, as does the organization and authority of the agency or agencies involved in this activity. The evolution of effective State planning is evident in some States, but virtually no State planning effort has reached a stage where it is fully capable of carrying out the responsibility for the development of an urbanization and economic growth policy (such as that recommended in the draft state planning bill, 14-41-00). To date, no state has prepared an entirely adequate state urban development plan, although the Hawaii zoning plan meets most of the criteria and indicates the direction for future action.

In a recent report, the Advisory Commission on Intergovernmental Relations stressed the importance of a strong well-staffed planning program directly under the governor, and recommended that each state develop such a planning capability in its executive branch.[1] The planning function should include, for the consideration of both the governor and the legislature: formulation of comprehensive policies and long-range plans for the orderly development of human and material resources; provision of a framework for functional, departmental, and regional plans; and assistance to the governor in his budget-making and program evaluation roles. However, it also should be recognized that one of the principal reasons underlying the failure of many States to develop an effective planning capability has been the neglect of the proper role of the legislature as an integral part of the planning process. While the governor should have direct control of the State planning function, the legislature's involvement should not be limited to formal ratification of completed plans, but should include participation in their formulation and revision.

The following concurrent resolution is offered as a means of providing the legislature with the organizational structure needed to assure continuing study and review of the progress toward a State policy dealing with urbanization and economic growth. The resolution establishes a joint legislative standing committee to serve as the focal point in the legislature for the development, review, modification, and implementation of the State comprehensive plan. Its intent then is to make the legislature a critical, central, and constructive component in the state planning process. The committee would receive from the governor or the State planning agency the proposed State comprehensive plan and related functional plans submitted by the State planning agency or other State agencies, for review and recommendation concerning legislative action. The committee would be responsible for reviewing and recommending changes in all proposed legislation affecting the plan and approving these modifications for conformance with the state comprehensive plan. Further, the committee would develop and introduce legislation affecting the plan.

A joint committee – rather than separate standing committees – is suggested because effective coordination between the two houses of the legislature is required for adequate consideration of the State comprehensive plan and related functional plans, and for review of relevant proposed legislation. A joint committee would also tend to facilitate close cooperation between the legislature and the governor, the State planning agency, and other parts of the executive branch. Finally, because of the scope and complexity of its functions, the joint legislative committee on State planning should have substantial powers and should be staffed with the professional, clerical, and other personnel needed to carry out its responsibilities.

Some States may prefer to assign direct responsibility for State planning review to a joint legislative committee already in existence on an interim basis. This committee would continue to function as a standing committee during the legislative session. Another alternative would be the establishment of a special joint subcommittee of legislative fiscal committees.

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[1] *Fiscal Balance in the American Federal System,* Report No. A-31, (Washington, D.C.: October 1967), Volume 1, Recommendation No. 21.

12-35-00

CONCURRENT RESOLUTION

"Providing for the Establishment of a Joint Legislative Committee on State Planning."

WHEREAS, a continuation of recent urbanization, rural-urban migration and economic growth trends is likely to produce consequences of critical importance to the well-being of the state and its local governments; and

WHEREAS, there is a need to formulate and implement a state comprehensive plan to guide public policies and programs affecting the nature, quantity, location, and quality of urbanization and economic growth; and

WHEREAS, there is a need for continuing overall review by the [legislature] of the state comprehensive plan, and related functional plans; and

WHEREAS, a joint legislative committee is a means of assuring continuing, systematic review and study of the progress toward a state comprehensive plan and of providing a framework within which relevant policies and programs may be evaluated;

NOW, THEREFORE, BE IT RESOLVED, by the [legislature] of the state of [ ], that a joint legislative committee on state planning is created to: (1) receive from the state planning agency the state comprehensive plan, and functional plans from the planning agency and other state agencies for review and recommendation for action thereon by the [legislature]; (2) review all relevant proposed state legislation for conformance with the comprehensive plan, and related functional plans, including but not limited to, such areas as highway construction, housing, mass transit facilities, airport development, open space, urban planning assistance, water and sewer facilities, public works planning, outdoor recreation, water and air pollution abatement, hospital and health facilities, and solid and liquid waste disposal systems; (3) develop and introduce legislation affecting the plan.

AND BE IT FURTHER RESOLVED, that the joint legislative committee on state planning shall consist of [ ] members, [ ] of whom shall be members of the Senate to be appointed by the [president of the Senate], and [ ] of whom shall be members of the [House of Representatives] to be appointed by the [speaker of the House of Representatives].

AND FURTHER, that any vacancy on the committee shall be filled by appointment by the officer authorized to make the original appointment.

AND FURTHER, that the committee shall choose a chairman, a vice-chairman, and a secretary from its membership, and may employ professional, clerical, stenographic, and other assistants and fix their compensation. Members of the committee shall serve without compensation, but shall be reimbursed for any expenses incurred by them in the performance of their committee duties.

AND FURTHER, the committee may: (1) request from any department, division, board, commission, or other agency of the state or any political subdivision of the state, such information and assistance as may be necessary for the committee's review of proposed legislation for conformance with the state comprehensive plan; (2) subpoena witnesses, take testimony, compel the production of books, records, documents, papers, and other sources of information deemed by the committee to be relevant to its investigation; (3) have access to all books, records, documents, and papers of any political subdivision of the state; (4) exercise all the powers and authority of other standing committees of the [legislature]; and (5) sit anywhere within or without the state to conduct the review herein described.

14-11-00

CONSTITUTIONAL PROVISION FOR SHORT BALLOT FOR STATE OFFICIALS

In several States, executive authority has been fragmented by the "long ballot," in which the heads of major administrative agencies are either elected independently or are appointed by elected boards or commissions over which the governor lacks substantive control. Despite the progress which has been made through reorganization efforts, the number of elected executive and administrative officials in many States is still considerable, averaging between ten and eleven per State. In nearly one-half of the States the head of the State educational agency is elected, and many State departments of health, mental health, highways, and welfare are administered by complex systems of boards and commissions, usually comprised of a large bipartisan membership serving for long overlapping terms.

This electoral fragmentation often is complicated further by the existence of an unnecessarily large number of separate, autonomous agencies. The relatively large number of administrative agencies in most States may be attributed to such factors as the "normal" drive for agency autonomy, traditions of separate responsibility of administrative officials to the electorate, reform movements designed to remove agencies from the governor's control in order to keep them "out of politics," and the desire of interest groups to insulate certain agencies from executive or legislative authority.

The major impact of this diffusion of administrative responsibility is to prevent governors from exercising effective supervision and control over the executive branch. In order to strengthen the governor's position, States should limit the number of separately elected administrative officials.

The following amendment, which draws upon the Alaska, Hawaii, Michigan, and New Jersey constitutions, is suggested for adoption as a means of eliminating the "long ballot" by enabling the governor to appoint and remove the heads of principal administrative agencies. This would establish direct channels of responsibility between the governor and agency heads charged with formulating and implementing policies within the framework of the governor's program. The amendment also provides for gubernatorial appointment of boards and commissions which direct major administrative departments as a means of further buttressing the governor's authority as the head of the State administration.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to State practice and requirements.]

The head of each administrative department shall be a single executive unless otherwise provided by law. The heads of all State administrative departments shall be appointed by the governor, with the advice and consent of the Senate, and shall serve at the pleasure of the governor or until the appointment and qualification of their successors.[1]

Whenever the head of an administrative department is a board, commission, or other body, the members thereof shall be appointed by the governor, with the advice and consent of the Senate. The

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[1] Recent trends in State constitutional revision indicate a preference for the appointment of the heads of all administrative departments, including the secretary of state, the state treasurer, and the attorney general. The governor and lieutenant governor run for election as a team.

term of office and removal of the members shall be provided by law. The board, commission, or other body may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor. All principal executive officers so appointed shall be removable by the governor.

14-12-00

AUTHORIZATION FOR THE GOVERNOR TO SUCCEED HIMSELF

If the States are to serve as viable partners in the American federal system, and if unnecessary centralization of power and responsibility in the national government is to be avoided, it is imperative that the States be equipped with the tools necessary to cope effectively with the problems of the twentieth century.

In many States the Office of Governor needs to be strengthened. Relatively few governors actually command the entire executive branch of State government due in part to restrictions which have been placed upon the office.

Constitutional limitations upon gubernatorial succession represent a major constraint upon the development of strong executive leadership. In the past, a major justification for provisions restricting the term of the governor was the fear that he would become so powerful through perpetuation in office that neither the electorate, the legislature, nor the courts could keep him in check.

However, current trends indicate that other factors have emerged which effectively serve to restrain excessive gubernatorial authority. For example, the marked increase in inter- and intra-party competition – particularly for the governorship – in practically all States; the growing strength and professionalism of State bureaucracies; the impact of interest groups upon the State political process; the progress being made in reapportionment; and the structural and procedural modernization of State legislative machinery combine to create a complex of forces which serve to prevent arbitrary gubernatorial actions.

Tenure limitations disregard the need for long-range program and policy planning, restrict the opportunity for the development of gubernatorial expertise, and ignore the growing influence of many line agency officials who are often more concerned with their own particular function than with its contribution and relationship to overall State policy. Tenure limitations also prevent the reelection of governors of proven ability, and remove from the electoral field candidates about whom voters usually are most fully informed. An important effect of these restrictions is to weaken the position of the States in the federal system.

The following draft constitutional amendment draws upon the Pennsylvania and Wisconsin constitutions.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

The governor shall be elected by a direct vote of the people at the general election every fourth year, beginning in _____. The candidate receiving [the greatest number] [a majority] of votes cast for that office shall be elected governor. The governor shall serve for a term of four years, beginning on the [first] day of [December] [January] next following his election. He is eligible for election as his own successor. Any qualified voter who is at least [30] years of age at the time of the election, and who has resided in this state for a period of not less than [5] years immediately preceding the election, is eligible to the office of governor.

14-21-00

REORGANIZATION OF THE STATE EXECUTIVE BRANCH

The burgeoning demands on State government to expand traditional services and initiate new programs emphasizes the need for greater flexibility in administrative reorganization. Reorganization of State government structure can be facilitated and the governor's role as chief administrator can be strengthened by authorizing the chief executive to submit reorganization plans to the legislature subject to legislative veto. A similar procedure is provided at the Federal level under the Reorganization Act of 1949, as amended. It permits the President to initiate modifications in the Federal Executive Branch, subject to Congressional veto. Under such a plan at the State level, the governor's responsibility for the efficient day-to-day operation of the government would be accompanied by authority to propose the revision of outmoded administrative structures and practices.

In its "pure" form, the plan provides for executive initiation of reorganization proposals, subject to legislative veto. The governor presents the proposals to the legislature and, after a specified time, the plans go into effect unless the legislature disapproves them. A legislative veto over executive initiative is substituted for the more common executive veto over legislative enactment.

This "pure" form is authorized by the constitutions of three States – Alaska, Massachusetts, and Michigan. In three other States – Kentucky, Pennsylvania, and South Carolina – reorganization proposals must be introduced as regular bills requiring legislative approval. In a seventh State – Georgia – the "pure" form exists along with a later version which requires affirmative legislative action approving or disapproving the governor's reorganization proposal. In two other States and in Puerto Rico, the plan once existed but now has lapsed, either through expiration of its temporary authority or, as in New Hampshire, through a State Supreme Court ruling of unconstitutionality.

In order to strengthen the role of the States in the federal system, it is desirable to provide an expeditious method by which administrative agencies may be organized into a rational structure with the governor serving as the major top management official.

A strong legislative branch, well organized and equipped with the necessary staff, can maintain continuing review of the operations of a strong executive branch. This will assure effective functioning of appropriate checks and balances.

The following amendment draws upon the Alaska, Massachusetts, and Michigan constitutions. It is consistent with the "Executive Reorganization Act" contained in the Council of State Government's 1957 *Suggested State Legislation.*

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

Except for organizational arrangements specified in this constitution, the governor may make such changes in the organization of the executive branch or in the assignment of functions among its units as he considers necessary for efficient administration. Changes that would modify statutory law, shall be set forth in executive orders and submitted to the legislature while it is in session. Thereafter, the legislature shall have [60] days of a regular session, or a full session if of shorter duration, to disapprove each executive order. Unless disapproved by resolution concurred in by a majority of the members of either house, each order shall become effective at a later date designated by the governor. Changes in statutory law effected by this Section shall be incorporated in [session laws and subsequent codes or supplements].

14-22-30

STATE DEPARTMENT OF COMMUNITY DEVELOPMENT

Increasing urbanization, and the problems which it imposes on communities and states has affected the nature of relationships within the federal system more than any other single factor in the last generation. The rapid growth of the population living in urban areas has been reflected in increasing state and local governmental indebtedness, employment, budgets, and responsibilities, not to mention federal activities and programs directed at urban problems. If, as it has been estimated, the communities of the United States must duplicate in the next 35 years all the community facilities constructed since the time of the first settlements in the United States, then all resources – federal, state, and local – must be employed in a coordinated and complementary fashion to insure maximum effectiveness.

At the federal level, urbanization has been met by a growing number of urban development programs and activities administered by a host of departments and agencies. The establishment of a Department of Housing and Urban Development in 1965 reflected a recognition of the magnitude of the urban problems facing our nation and of the even more difficult problems involved in meshing the efforts of federal, state, and local agencies.

In its pioneer report on *The States and the Metropolitan Problem,* the Council of State Governments recommended creation or adaptation of an agency of the state government to "aid in determining the present and changing needs of metropolitan and nonmetropolitan areas of the state."[1] The inclusion of nonmetropolitan as well as metropolitan areas in the Council's recommendation reflected a desire to have the proposed state agency deal with problems of strengthening local governments generally.

The creation of a state department of community affairs presents an opportunity to bring together present and new state functions which have as their principal objective the development and expansion of state efforts to aid communities in meeting the problems of urbanization. Such an action is likely to improve the effectiveness of state programs if only because it gives the communities of the state a direct spokesman in the executive branch and because it provides a focus for policy development and execution at the state level. It also gives the governor an opportunity to make arrangements for coordinating federal and state progress and to continuously study and evaluate the needs of communities within the state.

In addition to supporting efforts to strengthen state organization for dealing with urban problems, the Advisory Commission has urged the states to play a constructive role in the administration of federal urban development programs within a state. To this end, the Commission adopted the following recommendation:

> The Commission recommends that the states assume their proper responsibilities for assisting and facilitating urban development; to this end it is recommended that federal grants-in-aid to local governments for urban development be channeled through the states in cases where a state (a) provides appropriate administrative machinery to carry out relevant responsibilities, and (b) provides significant financial contributions, and when appropriate, technical assistance, to the local governments concerned.[2]

The following examples of "channeling" may be given: the Higher Education Act of 1965 provides for an increase in federal funds available for use in a state by an amount equal to funds contributed by the state government; the Land and Water Conservation Fund Act permits state agencies to transfer funds to political subdivisions of the state and to administer the program on a somewhat-decentralized basis; and the Elementary and Secondary Education Act of 1965 provides that grants to assist local education agencies shall be paid to the states. Al these programs require the existence of effective state organizational machinery and they require or encourage state financial participation in the cost of the program.

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[1] Council of State Governments, *The States and the Metropolitan Problem* (Chicago, 1956), p. 128.

[2] Advisory Commission on Intergovernmental Relations, *Impact of Federal Urban Development Programs on Local Government Organization and Planning* (Washington: U.S. Government Printing Office, 1964), p. 30.

The following draft bill is designed for use in states which desire to give appropriate organizational status to community development activities and to establish machinery for coordinating, directing, and assisting efforts to alleviate and solve urban development problems. It is recognized that the functions of such an agency must be tailored to fit the existing organizational and program pattern. The agency, well organized and adequately staffed, would be in a position to help the state pay a positive and constructive role in solving urban problems. While the absence of an agency does not necessarily signify state inaction or disinterest, its presence is likely to increase both the level and significance of state urban-related activities.

The following suggested legislation draws primarily from an earlier model bill for a state office of local affairs and the act establishing the Department of Community Affairs in Pennsylvania. The first section of the draft contains the legislative findings and the purpose of the act to promote the coordination of state activities which affect local government. Section 2 establishes the department headed by a secretary. Sections 3 and 5 assign responsibilities to the department and the secretary and section 4 requires provision of data to the secretary. Provision is made in sections 6 and 7 for the assignment of state responsibility for designated community affairs and development programs to the department with an option for the handling of federal and state grants and financial assistance. Section 8 requires coordination of state programs and activities which have an impact on community affairs. Section 9 provides the authorization for appropriations and grants and section 10 requires a report to the governor with the secretary's recommendations for desirable legislative action.

Suggested Legislation

[Title should conform to state requirements. The following is one suggestion: "An act to establish the department of community development, to strengthen and extend the role of the state in assisting communities within the state, to improve the administration of federal grant programs within the state, and for other purposes."]

(Be it enacted, etc.)

Section 1. Findings and Purpose. The legislature finds that:

(1) the rapid growth being experienced by many communities within the state presents new and significant problems for the governmental units of these communities in providing the necessary public services and in planning and developing desirable living and working areas;

(2) the full and effective use of the many grant programs of the federal government affecting community development necessitates full cooperation and coordination of existing state and local government agencies;

(3) the coordination of existing state activities which affect the communities of the state requires the establishment of machinery within the state government to administer new and existing programs to meet these problems;

(4) it is the urgent responsibility of the state to assist communities in meeting these problems and whatever way possible including technical and financial assistance.

It is therefore the purpose of this act to establish a department of community development, to provide for state financial and technical assistance to the communities of the state, and to otherwise assist in the community development in order to provide the health and living standards and conditions that the welfare of the people of the state require.

Section 2. Establishment of Department of Community Development. (a) The department of community development[1] (hereafter referred to as the "department") is established to carry out this act.[2] The department shall be headed by a secretary of community development (hereafter referred to as the "secretary") appointed by and serving at the pleasure of the governor [by and with the consent of the senate]. The secretary shall appoint and prescribe the duties of such staff as may be necessary. [Employees of the department shall be subject to pertinent civil service and personnel policies established for state employees generally and shall be paid at salaries or rates of pay comparable to those of state employees with equivalent responsibilities in other state agencies.][3] [The salary of the secretary shall be $[ ] per annum.]

Section 3. Duties of the Secretary. (a) The secretary shall supervise and administer the activities of the department and shall advise the governor and the legislature with respect to matters affecting community affairs generally and especially on the role of the state in these affairs.

(b) The secretary may delegate any of his functions, powers, and duties to such officers and employees of the department as he may designate and may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable.

(c) The secretary may submit and adopt all necessary plans; enter into contracts; accept gifts, grants, and federal funds; prepare and submit budgets; make rules and regulations; and do all things necessary and proper to carry out this act. [Federal and other funds received by the department shall be paid or turned over to the [insert name of central state financial agency, if one exists, which normally performs such functions] and shall be expended upon the approval of the secretary.][4]

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[1] Other appropriate names for the department include Department of Urban Development, Department of Housing and Urban Development (Affairs), Department of Housing and Community Development Affairs.

[2] A number of existing state statutes specifically authorize the establishment of an advisory body made up of local officials and other affected organizations to advise the office of local affairs in the carrying out of its functions and on problems facing local governments in the state. In Tennessee, for example, the office of local government is advised by the local government advisory commission consisting of nine members appointed by the Governor. The chairman is the state comptroller of the treasury, three members are selected by the Governor from slates nominated by the Tennessee Municipal League and the Tenessee County Services Association, and two members are appointed by the Governor from his state executives.

[3] The language of this provision should reflect existing state legislative and administrative requirements relating to civil service, salary, and employee benefits. Where possible a citation to an existing state civil service act should be included to clarify the way in which existing merit systems, pay scales, and employee benefits will be applied to employees of this department.

Section 4. Provision of Data to Secretary. All state agencies or any political subdivisions of the state shall provide such assistance and data to the secretary as will enable him to carry out his functions, powers, and duties.

Section 5. Functions of the Department. The department shall have the following functions and responsibilities:

(1) Cooperate with and provide technical assistance to county, municipal, [identify other appropriate units of general local government] and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging an orderly productive and coordinated development of the state.

(2) Assist the governor in coordinating the activities of state agencies which have an impact on the solution of community development problems and the implementation of community plans.

(3) Encourage and, when requested, assist the efforts of local governments to develop mutual and cooperative solutions to their common problems.

(4) Assist and cooperate with communities in establishing and organizing neighborhood information centers and referral services.

(5) Study existing legal provisions that affect the structure and financing of local government and those state activities which involve significant relations with local government units; and recommend to the governor and the legislature such changes in these provisions and activities as may seem necessary to strengthen local government.

(6) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities. The clearinghouse should also provide information on available federal and state financial and technical assistance.

(7) Carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary. In carrying out such studies and analyses, particular attention should be paid to the problems of

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[4] This provision should be used where all federal grants and other funds to finance state programs and activities are channeled through and managed by a central financial agency. It in no way intends to give such agency control of the funds but rather is to permit consolidated management of federal grant and other non-state funds.

metropolitan, suburban and other areas in which economic and population factors are rapidly changing.

(8) Assist and cooperate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials, in carrying out the functions and duties of the department.

(9) Consult with private groups and individuals, and if the secretary deems it desirable, hold public hearings to obtain information for the purpose of carrying out this act.

(10) Develop and test model or demonstration programs and projects, contract to administer certain functions or services within a community of the state for such purposes, or to otherwise provide a program of practical research in the solution of community problems.

Section 6. Administration of Programs Affecting Community Affairs and Development.

(a) The secretary shall exercise the state responsibility for administering, supervising, and coordinating the following community affairs and development programs and shall fully carry out the state role in federal grant programs applicable to them: [(1) projects and programs for the planning and carrying out of the acquisition, use, and development of land for open space and recreational purposes; (2) programs to develop decent, safe, and sanitary housing to serve the needs of all citizens of the community including low-rent and middle-income housing constructed by public authorities or non-profit groups, and other publically assisted housing activities; (3) urban renewal and redevelopment activities to rebuild slum areas including the provision or supervision of relocation services for individuals, families, businesses, and nonprofit organizations to assure that such displaced are provided with comprehensive relocation and financial assistance; (4) programs and projects to aid in the development, financing and staffing of neighborhood information and service centers.][5]

[(b) All applications for federal grants for the purposes of the programs designated under subsection (a) of this section shall be submitted to the department. The secretary shall approve or disapprove state grants to apply toward the non-federal share of project costs consistent with section 8. Such approval may be conditioned upon subsequent approval of the project by an appropriate federal agency for federal grant funds. Upon approval of the application, the secretary

[5] Items (1), (2), (3), and (4) of subsection (a) are given as examples of the types of program areas which might be placed directly under the new department. Among other programs which might be considered are the following: provision of schools and educational services; construction and administration of public health facilities and services; water and air pollution control and abatement programs; planning on a neighborhood, community or regional basis; programs to alleviate and eliminate poverty; planning and construction of hospitals, airports, water supply and distribution facilities, sewage facilities and waste treatment works, transportation facilities, highways, water development and land conservation, and other public works facilities; and supervision of and assistance in the development and enforcement of community building codes.

shall trnsamit it to the appropriate federal agency. Any application disapproved by the secretary shall be returned to the applicant with written notice of modifications necessary to make the project eligible, in terms of state or federal policy.][6]

Section 7. Transfer of Responsibility. [Use this section to transfer the functions, powers, and duties and employees, property, records, and files involving programs and agencies listed in section 6.]

Section 8. Coordinating Community Development Programs. The successful discharge of this act demands that all activities and programs of state agencies which have an impact on community affairs be fully coordinated. State agencies shall cooperate fully with the secretary and the governor in fulfilling this act. The governor and the secretary may establish such coordination, advisory, or other machinery as they may find necessary to carry out this act and they may issue such rules and regulations as they believe necessary and desirable to carry out the provisions of this act.

Section 9. Authorization for Appropriations and State Grants. Monies may be appropriated to carry out this act including monies to enable the secretary to assist communities in meeting the non-federal share of federal community development programs as follows, but in no case may the state grant exceed one-half:

(1)[7]

Section 10. Report. The secretary shall report annually to the governor and the legislature on the activities of the department and the nature of existing community problems and shall, together with the governor, submit such recommendations for legislative action as may appear desirable and necessary.

Section 11. Separability. [Insert separability clause.].

Section 12. Effective Date. [Insert effective date.]

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[6] The insertion of this subsection may be considered independently of subsection 6(a). Its use depends on the desired role for the department in federal-local grant programs.

[7] List federal grant programs for which state financial assistance is available to localities and prescribe the amount of the state grant in percentage terms. For example: "(1) For planning activities undertaken under Section 701 of the Housing Act of 1954, as amended, state grants to municipal, county or regional planning bodies may be [20 to 50] percent of the non-federal share of the cost of such activities." Other federal programs for which some states already provide financial assistance in meeting the non-federal share include: open space, urban renewal, public housing, airport development, hospital and medical facility construction, and waste treatment works.

14-41-00

STATE AND REGIONAL PLANNING

The increasingly complex responsibilities of State government have created a need for strong, well-staffed, strategically located planning services to assist in formulating short and long-term State goals and needs and an inventory of resources for meeting them. The sophisticated task of relating innumerable programs and policies to one another and to those of other levels of government is a responsibility that States cannot avoid.

The vital need for such a planning capability is nowhere more clearly illustrated than by the problems arising from the increasing concentrations of population in urban areas, the plight of rural communities, and the attendant difficulty of matching needs for public services with available resources. While Federal grant-in-aid programs represent the major current national effort to assist the States and local governments, the constantly increasing number and complexity of grant programs frequently have served as an impediment to their effective utilization. These developments clearly underscore the need for a strong State and regional planning capability.

Governors and State legislatures must be able to allocate current resources among a number of competing needs through the budgetary and appropriation process. They need to analyze and assess the impact of individual programs on one another and to anticipate emerging problems and demands. These responsibilities require the closest relationship between highly qualified budget and planning staffs and call for a continuing, close, functioning relationship.

The need is increasingly recognized for a planning organization and for planning procedures capable of developing urbanization policies for the States and relating the complex federal grant programs to one another and to State and local activities and resources. There is a pressing need for a method of coordinating departmental plans, many of which are required by federal grant legislation as a condition for receiving funds. Yet most states do not have an effective means of coordination, and in only one-third of the States are State agencies required to obtain the approval of the governor prior to submitting applications for Federal grant assistance. The necessity of relating those grant-assisted local projects and programs which have a significant impact outside their own borders to areawide needs and objectives and to State plans and policies is still another complicating factor. Federal legislation now requires review of urban development grant applications from metropolitan areas either by a metropolitanwide or State agency and State offices of planning are sometimes assigned a coordinative role for the utilization of federal funds by both State agencies and their local units. However, effective planning and coordination often still is lacking.

Not only do States have a responsibility for coping with urbanization after it has taken place; they also have a responsibility to plan for urbanization to come. The States need to *act* rather than merely to *react.* For States to fulfill their key role in the development of urbanization policy they must have a planning process that will develop the policies needed to channel and guide the growth of the State. The States through their constitutions and statutes determine the general outline and many of the details of the specific structure, form, and direction of urban growth. They should supply guidance for specific local government, metropolitan, and multicounty planning and development programs. They should establish a link between urban land use and development oriented local planning efforts and broader regional and national objectives. Although the evolution of effective State planning can be seen in a few States, it is doubtful if planning in any State government has arrived yet at a stage adequate for assuming its appropriate role in the development of State land use and urbanization policy.

Two reports of the Advisory Commission on Intergovernmental Relations include consideration of this problem and recommend that each State develop a strong planning capability in the executive branch of its State government. The Commission recommends that the planning function include formulation for consideration by the governor and the legislature of comprehensive policies and long-range plans for the effective and orderly development of the human and material resources of the State, including specifically plans and policies to guide decisions which affect the pattern of urban and social growth. The provision of a framework for coordinating functional, departmental, regional, and local plans is recommended. Further a method of formal review of State, regional, and local plans and projects and, where relevant, local implementing ordinances for their conformity with State urbanization plans and policy is recommended. More specifically, it is urged that multicounty planning agencies be assigned responsibility for reviewing applications for federal or State physical development project grants from constituent local jurisdictions and that provision be made for review and comment on all local and areawide applications for urban planning assistance. Finally, it is recommended that State legislatures provide within their standing committee structure a means to assure continuing, systematic review and study of the progress toward the State urbanization policy.[1]

The following suggested legislation presents a general planning act, provides the framework for overall State and regional planning procedures, and incorporates the specific recommendations mentioned above. It is based on a number of State acts, earlier model legislation, and report recommendations. Recent Florida and Georgia statutes as well as earlier Connecticut, Minnesota, Missouri, Wisconsin, and Tennessee legislation, have been used. The recommendations of the Virginia Metropolitan Areas Study Commission report, *Metropolitan Virginia: A Program for Action* and the accompanying implementing bills, and the National Municipal League's, "Model State and Regional Planning Law" also were of assistance. Finally, several of the reports and policy statements issued over the last decade by the Council of State Governments, the National Governors' Conference, and the American Institute of Planners were helpful.[2]

The provisions of the suggested bill incorporate several basic assumptions regarding State planning. First, as provided in Section 2, the State planning staff is directly responsible and immediately accessible to the governor who must be able to use planning as a management tool to guide programs and policies. This objective is furthered by identifying the governor as the State Planning Officer. The governor appoints a State director of planning to head the planning staff. The responsibility for the detailed administrative organization and location of the office is left to the governor.

Second, the overall, comprehensive planning function must be continuous and integrated with the executive budget function. In a proposed State Constitutional Amendment which appears elsewhere in this volume, the governor is designated as the budget making authority. When the governor is also the budget officer, a close administrative relationship is assured by giving the governor latitude in making specific organizational arrangements such as locating both the planning and budget agency in his executive office or in a combined planning, budgeting, and programming agency. Procedurally, the relationship between planning and budgeting is maintained by the requirement that a development program for the next six years be submitted annually by the governor to the State legislature along with the executive budget. The current year's (or biennium's) development program is incorporated in the budget requests and the succeeding five (or four) year's plan accompanies it in order to facilitate consideration by the legislature of the future implications of current expenditure decisions.

Third, planning is basically a management tool and is concerned not only with physical development but also with related social and economic programs and policies. Nevertheless, it is necessary to produce a

[1] *Fiscal Balance in the American Federal System,* Report No. A-31, (Washington, D.C.: October 1967) Chapters 2 and 5 and *Urban and Rural America: Policies for Future Growth,* Report No. A-32 (Washington, D.C.: April 1968) Chapter 6, Recommendation Three.

[2] The Council of State Governments, *Planning Services for State Government,* (Chicago, Illinois, 1956); the National Governors' Conference, Subcommittee on State Planning, *State Planning, A Policy Statement,* (Chicago, Illinois: The Council of State Governments, 1962), and the Committee on State Planning, *A Strategy for Planning,* October 18, 1967. American Institute of Planners, Committee on State Planning, *State Planning: Its Function and Organization,* October 10, 1958 and "State Responsibilities for Urban Development," in Proceedings of AIP Second Biennial Government Relations and Planning Policy Conference, Washington, D.C., 1963.

plan not only as a concept but also as a document. It is easier to include consideration of social and economic factors in the planning process than it is to express them specifically in a plan as a document. However, the plan as a document provides a point of reference for State agencies, local governments, and the public. It represents a public commitment analogous to the executive budget in the fiscal management field and similarly should be approved, in its essentials, by both the executive and the legislature. If the actions of other governments are to be influenced or guided by State policies as incorporated in a plan, they must be clearly stated through a combination of maps and other visual presentations and text, descriptions, and policy statements. There must be clear standards made public, against which programs, projects, and policies can be evaluated and judged. The suggested bill emphasizes both planning procedures and the need for certain specific plans as well as methods of reporting and communicating, such as periodic special reports, expert testimony, and consultation and advice.

A fourth basic assumption of the draft, incorporated in Section 9 thru 17, is that State and regional planning are only one element in an overall picture including national, interstate regional, and local elements. The provisions of the act acknowledge these relationships by assigning responsibility to the State planning agency for coordinating State and local planning with interstate, regional and national plans and policies, by providing for planning districts, and by authorizing the formulation of planning district commissions to undertake regional planning within the State. The State planning agency is assigned responsibility for reviewing and commenting on the comprehensive plans of planning district commissions for conformity with plans and policies issued by the State government. Planning district commissions may review local plans, proposals for projects, and land use development and control ordinances which have an impact outside the borders of the local governments adopting them and may make recommendations for modifications where needed to achieve conformity with plans and policies issued by the district commissions or by the State agency. For areas where no district commissions have been established, the State agency would make the review and formulate recommendations. To allow for differences among States, the draft provides an option as to whether the commissions and the agency should be authorized to require submission for review and recommendations or merely to request it.

Regional plans and local government plans, projects, and ordinances having an impact outside their borders cannot be in conflict with State plans and policies which have been approved by the legislature. The state agency, or a planning district commission, by delegation from the state government, must make a finding that no conflict exists before the plans, projects, or ordinances can go forward. For formal coordination and review procedures such as those established by this model act to operate effectively, it is essential to have a continuing cooperative relationship among the levels of government. It is assumed that there would be frequent consultation so that potential conflicts could be avoided.

Finally, to be fully effective, State planning activities must be directly related and conducted pursuant to the State legislative process, so that the use of plans in the formulation of legislative policy may be facilitated. This objective is carried out in Section 18 by assigning to a standing legislative committee in each branch (or a joint committee of the two branches) the responsibility for reviewing and reporting out State comprehensive and functional plans and by providing that the plans have full force and effect as State policy only upon their approval by the State legislature. The committees would review and amend plans and make recommendations regarding their adoption as State policy by the legislature. The committees would also be assigned responsibility for reviewing proposed state legislation that would have a significant impact on previously adopted State comprehensive plans. This might involve the multiple reference of bills to the subject matter committees, to the planning committees, and in some instances to the finance or appropriations committees as well.

A continuing cooperative relationship is anticipated between the executive agency staff, on the one hand, and the legislative committee and its staff on the other. This has been the general experience in the relationship of executive budget agencies and parallel legislative fiscal review agencies.

A special feature of the bill, incorporated in Sections 4 thru 8, is a systematic schedule for planning. The State comprehensive plan, covering physical resources, human or social resources, economic resources, public safety, and the structure and services of government, establishes broad general directions to at least ten years ahead. It is a document largely policy oriented. The series of functional plans should be formulated with at least a four year forward time span. These intermediate statewide plans for highways, health, outdoor recreation, and so on, are within the framework of the State's broad comprehensive plan, and in part provide the basis for keeping the State comprehensive plan current. Finally, the annual development program should be prepared on at least a one year and a three year basis. (Where there are biennial legislative sessions the program should be based on a two and four year time period.) The development program establishes and recognizes long-term goals and short-term program objectives. It draws on the functional plans and includes consideration of regional and local planning objectives. It is the governor's program for the years just ahead. The governor's budget proposals reflect these judgments.

Another special feature of the bill is the effort to provide a framework for designating regions which will serve several purposes and thus avoid overlapping, confusion, and conflict. The State planning agency is directed to divide the State into planning districts based on relevant social, economic, political, and other factors indicating a community of interest. These regions would then become basic units for regional arrangements. They would serve as regional components in State planning procedures and provide the areawide focus for local planning. They would also serve as an intermediate level, for planning purposes, between local governments and the State somewhat analogous to the position of interstate regional planning agencies in relation to national planning. Furthermore, State agencies are directed to use them to the extent possible for their regional purposes and, pursuant to the President's memorandum of September 2, 1966 and the implementing Bureau of the Budget Circular,[1] they would become the boundaries for planning and development districts assisted by the Federal Government.

At the initiative of local governments representing at least fifty percent of the population within any proposed planning district, a planning district commission could be established to undertake regional planning within the area. Finally, the districts and the planning district commissions, with necessary modifications and additional authority, could become regional planning and development commissions or service districts to provide areawide services such as water supply, sewage disposal, mass transportation, park and recreation programs, and public works. They could apply for, administer, and coordinate grants and contracts available through programs authorized by State and federal laws for physical, economic, and human resource planning and development.[2]

The creation of advisory committees is provided for in Section 3 of the proposal. Such groups can serve a number of functions or assignments. They can, for example, provide representation for and coordination with the State legislature, the planning district commissions, local governments, and State agencies and departments. They can also provide representation for the general public. More specialized, ad hoc advisory committees could permit the governor and planning agency to draw on specialized talent for particular studies and projects. If some States deem it desirable to assure certain types of representation in the State planning activity, a planning advisory council could be established specifically by legislation, and discretion left to the governor and the planning agency to appoint such additional advisory committees and commissions as they deem necessary.

[1] Memorandum from the President Requesting Coordination at the Federal Level, September 2, 1966 and Bureau of the Budget Circular No. A-80, January 31, 1967.

[2] A suggested act, "Regional Planning and Development Commissions," appearing in this volume (31-33-00), can be used to authorize the transforming of a planning district commission, established under this act, into a planning and development commission or a service district commission.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act relating to state and regional planning, establishing a state planning agency and program, and providing for the creation of regional planning agencies."]

(Be it enacted, etc.)

Section 1. Findings and Purpose. The legislature hereby finds and declares that:

(1) the people of this state have a fundamental interest in the orderly development of the state and its regions;

(2) the state has a positive interest in the establishment of a comprehensive state and regional planning process and in the preparation and maintenance of a long-term, comprehensive plan for the physical, social, and economic development of the whole state and of each of its regions, which plan can serve as a guide for local governmental units and state departments and agencies;

(3) the continued growth of the state, particularly in urban areas, and the general readjustment of people and the economy in many of the state's rural regions, present problems which cannot be met by individual counties or cities;

(4) local government planning can be strengthened when conducted in relation to studies and planning of both statewide and regional character; and

(5) To assure orderly and harmonious coordination of state and local plans and programs with those of the Federal Government, state and regional planning and programming require direct leadership by the governor.

It is the purpose of this act to promote the development of the state's human, economic, and physical resources, and to promote the health, safety, and general welfare of its citizens, by creating, within the executive branch, an agency for comprehensive statewide planning. The agency shall act as a directing, advisory, consulting, and coordinating agency to harmonize activities at all levels of government, render planning assistance to all governmental units, and stimulate public interest and participation in the social, economic and physical development of the state.

Section 2. State Planning Agency: Creation and Organization. (a) There is created a state planning agency [in an appropriate administrative unit of government such as the executive office of the governor or as an independent agency in the executive branch]. The state planning agency shall consist of the governor as the state planning officer, a director of planning, who shall be appointed by the governor and serve at his pleasure, and other employees appointed [in conformance with the requirements of the state civil service provisions] [strictly on the basis of merit].

(b) The governor, through the state planning agency, shall encourage comprehensive and coordinated planning of the affairs of state government. He may inquire into the methods of planning and program development in the conduct of the affairs of state government; he shall provide adequate systems of records for planning and program purposes; and he may prescribe the institution and uses of standards for effective planning and programming.

(c) The governor may direct any state department or other agency of the state government to furnish the state planning agency with such personnel, equipment, and services as are necessary to enable it to carry out its responsibilities and duties, prescribe the terms thereof, including reimbursement of costs thereof.

(d) The governor may delegate any of his powers, duties, and responsibilities, as conferred by this act, to the director of planning or to any other state officer or department.

Section 3. Advisory Committees or Councils. The governor may establish advisory committees or councils and appoint the members thereof, who shall serve at his pleasure. Members shall serve without compensation, but shall be reimbursed for the necessary expenses incurred in the performance of their duties. The governor shall designate the chairman and such other officers as he may deem necessary for each advisory committee or council. Advisory committees or councils established pursuant to this section shall meet at the call of their chairmen, or of the state director of planning.

Section 4. State Planning Agency: General Powers, Duties and Functions. The state planning agency shall be the principal staff agency of the executive branch to plan for the comprehensive development of the state's human, economic, and physical resources and their relevance for programs administered by the state and the governmental structure required to put such programs into effect. It shall provide information, assistance, and staff support by all appropriate means. The agency shall:

(1) formulate a long-range state comprehensive plan, to be submitted by the governor to the [legislature] for its consideration, as provided for in section 5;

(2) formulate, for approval by the governor and the legislature, long-range plans and policies for the orderly and coordinated growth of the state, including but not limited to, functional plans as provided for in section 6;

(3) prepare special reports and make available the results of the agency's research, studies, and other activities, through publications, memoranda, briefings, and expert testimony;

(4) analyze the quality and quantity of services required for the continued orderly and long-range growth of the state, taking into consideration the relationship of activities, capabilities, and future plans of local units of government, area commissions, development districts, private enterprise, and the state and federal government;

(5) encourage the coordination of the planning activities of all state departments, agencies and institutions, local levels of government, and other public and private bodies within the state;

(6) advise and consult with regional and local planning agencies;

(7) work with the state budget agency and other state departments, agencies, and institutions to study and review plans and federal aid applications filed with the Federal Government;

(8) at the direction of the governor, and in cooperation with the state budget agency, survey, review and appraise the accomplishments of state government in achieving the goals and objectives set forth in the [annual] [biennial] development program;

(9) borrow money and apply for and accept advances, loans, grants, contributions and any other form of assistance from the federal government, the state, or other public body, or from any sources, public or private, for the purposes of this act, and give such security as may be required and enter into and carry out contracts or agreements in connection therewith; and include in any contract for financial assistance with the federal government such conditions imposed pursuant to federal laws as it may deem reasonable and appropriate and which are not inconsistent with the purposes of this act;

(10) review and comment on all local and areawide applications for federal planning assistance, or delegate such authority to district commissions created pursuant to section 13;

(11) exercise all other powers necessary and proper for the discharge of its duties, including the promulgation of reasonable rules and regulations.

Section 5. State Comprehensive Plan. (a) The governor, through the state planning agency, shall prepare, and upon legislative approval, issue, and have in continuous process of revision, the long-range state comprehensive plan based on studies, plans, needs, and operations of every department, agency and institution of the state, local and regional units of government, and the federal government, taking into account the existing and prospective resources and capabilities of the state government. The state comprehensive plan shall identity and stress statewide goals, objectives and opportunities.

(b) The state comprehensive plan shall provide long-range guidance for the physical, economic, and social development of the state and shall include, but not be limited to, the following:

(1) population and economic analysis with projections for each region and sub-region of the state;

(2) general land use policies for urban development, agriculture, mineral extraction, forests, open space, and other purposes;

(3) policy and goals for housing and urban renewal;

(4) policy for the balanced development of airport, highway and public transportation facilities;

(5) policy for health services, manpower planning, employment opportunity, education, elimination of poverty, law enforcement, and other programs;

(6) projection of needs for public facilities, including but not limited to, headquarters and district state office buildings, state colleges and universities, state health and welfare, and correctional institutions;

(7) recreation and open spaces for state facilities, major local facilities, and federal recreation areas;

(8) inventory and appraisal of the state's natural resources, setting forth state policy for their prudent exploitation, conservation, and replenishment; and

(9) policies for intergovernmental relations and governmental structure.

(c) The state comprehensive plan and revisions thereof shall be transmitted to the legislature for its consideration and action. They shall be referred to committees as provided in section 18. The plan and revision thereof, when approved by the legislature, shall become effective as state policy.

Section 6. Long-Range Functional Plans. (a) The state planning agency may prepare, or cause to be prepared, and issue on behalf of the governor, a series of long-range functional development plans relating, but not necessarily limited, to outdoor recreation, water resources, transportation, housing, education, economic development, health services and facilities, employment, poverty, manpower planning, and other broad areas of state responsibility.

(b) To assist in the development of plans and programs of the state, the governor, through the state planning agency, may direct each department, agency, and institution of the state to designate from among its employees and officers, a planning officer or representative who shall be responsible for the planning and coordination of the activities and responsibilities of the department, agency or institution. Such planning officer or representative shall coordinate program plans prepared for each area of program responsibility within his agency.

(c) Long-range functional plans and revisions thereof shall be transmitted to the legislature for its consideration and action. They shall be referred to committees as provided in section 18. The plans and revisions thereof, when approved by the legislature, shall become effective as state policy.

Section 7. Development Program. The governor shall prepare and submit to the legislature [annually] [biennially], for review concurrently with the [annual] [biennial] budget document, a development program covering the forthcoming [four] [six] years. The development program shall consist of the following:

(1) an analysis of the current posture of state development in terms of long range needs and opportunities, together with a review of present factors and activities affecting the development of the state. This analysis shall present past accomplishments and the current status of programs and activities and review such factors as the overall economic posture of the state; the major problems confronting the state; the activities of the private sector, local and federal activities; and state operations designed to meet the responsibilities of overall state development and activities;

(2) a statement of specific policies, as prescribed in section 5, for at least each of the following general functional areas: economic development, social and human resource development, natural resource development, transportation, regional and local development, and other areas;

(3) details of state programs and the quantified annual objectives of each program over the forthcoming six (6) years. Analysis of the relationship of these programs to policies enunciated in section 6 shall be described in detail. New programs, elimination or modification of existing programs, and the anticipated performance or accomplishment of current, new or modified programs shall be described in detail;

(4) identification of the methods and requirements for implementing the proposed annual development program which shall describe, for each year, the fiscal resources, capital facilities, other resources, and any administrative changes or new legislation required; and

(5) a [four] [six] year schedule of proposed capital improvements, to be compiled from schedules of proposed capital improvements submitted to the state planning agency by each state agency, board and commission.

Section 8. Annual Economic Report; Special Reports. (a) The governor, as state planning officer [and budget officer] shall annually present to the legislature and to the people a report appraising the state's economy, reviewing the extent to which economic growth and development have provided employment and income, and other appropriate economic factors and indicators. This report shall contain timely and authoritative information concerning current and prospective economic growth and development in the state, an analysis and interpretation of such information in the light of existing state economic policies, and an appraisal of the various programs and activities of the state in effectuating these policies. The report shall be related to, and developed in close conjunction with, the [annual] [biennial] development program.

(b) The state planning agency shall also prepare special reports on those aspects of the agency's work which are of current interest. Special reports on major research and planning projects shall be made public promptly after completion.

Section 9. Review of Local Plans in Specified Circumstances. Where no planning district commission has been established, the state planning agency may [require] [request][1] local governments to submit to the agency all proposed local government comprehensive land use, circulation, and public facilities plans; proposals for public works projects; zoning and subdivision regulations; and official maps and building codes, and all amendments or revisions thereof, when such plans, proposals, regulations, codes, and ordinances have an impact outside the local borders. The agency may review such plans, proposals, regulations, codes, and ordinances for conformity with state plans and policies issued by the State Planning Agency on behalf of the governor; and may make recommendations within [thirty] days for their modification where deemed necessary to achieve conformity.

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[1] In deciding whether to authorize the State Planning Agency to require or merely to request local governments to submit plans, proposals, and ordinances for review and recommendations as here provided, states will want to consider the status of planning in the state and the capability and readiness of the legislature to assume responsibility for approving all the necessary plans and policies to make the provisions of section 10 effective.

Section 10. Prohibition of Conflict with State Policies. (a) No state agency functional plan may be promulgated, nor may any state agency project be undertaken, unless the state planning agency finds that they are not in conflict with state plans adopted by the legislature.

(b) No planning district commission comprehensive plan shall be promulgated unless the state planning agency finds that it is not in conflict with state plans and policies adopted by the legislature.

(c) No municipal or other local government comprehensive land use, circulation, or public facilities plan; zoning and subdivision regulations; official maps or building codes; nor public works projects which have an impact outside the local borders, shall be promulgated or undertaken unless the state planning agency, or when authorized pursuant to subsection (d) of this section, a planning district commission, shall find, within [thirty] days of submission by the local government, that such plans, projects, and ordinances are not in conflict with State plans and policies adopted by the legislature.

(d) The state planning agency may authorize a planning district commission, created pursuant to section 13, to make the findings required by subsection (c) of this section for plans, regulations, and maps of local governments located within their jurisdiction, but the state agency shall have the right to review the findings of the planning district commission pursuant to rules and regulations promulgated by the state planning agency. Such review shall be completed within [thirty] days. Local governments may appeal a finding of a conflict with state plans and policies by a planning district commission to the state planning agency within [fifteen] days of such a finding. The state planning agency shall promulgate rules and regulations governing such appeals. In exercising either its review or appeal responsibilities, the state planning agency may amend, reverse, or affirm the planning district Commission findings. The state planning agency and planning district commissions shall follow procedures required by the [state administrative procedures act] in making the findings required by this section.

(e) Within [thirty] days after a finding made by the state planning agency, a municipality or other local government may petition the [insert name of appropriate court] for review of the finding in the manner provided in [cite appropriate provisions of judicial review statute]. The court may affirm or reverse the finding or may return it to the state planning agency for further action.

Section 11. Definition and Redefinition of State Planning Districts. (a) To assure the economic and orderly development of the state through the encouragement of sound state and regional planning, the application of long-range programming, the renewal of substandard, obsolescent, and blighted areas, and the appropriate development of land in the various regions of the state, the state planning agency shall undertake the studies and surveys necessary to group all governmental subdivisions into logical economic development and planning districts.

(b) Planning districts may consist of a single county or of any combination of two or more contiguous counties or other governmental subdivisions. No governmental subdivision shall be divided in forming a planning district.

(c) In conducting the studies and surveys required, the state planning agency shall consult with the governing bodies of the governmental subdivisions within, and adjoining, a proposed planning district, and shall hold at least one public hearing in the proposed planning district.

(d) In determining which governmental subdivisions to include in a planning district, the agency shall consider such factors as community of interest and homogeneity; existing metropolitan and regional planning agencies; patterns of communication and transportation; geographic features and natural boundaries; extent of urban development; relevancy of the district for provision of governmental services and functions and its use for administering state and federal programs; the existence of special agricultural, forestry, conservation, or other rural problems; uniformity of social or economic interests and values; park and recreational needs; and the existence of physical, social, and economic problems of a regional character. Furthermore, in determining the boundaries of a planning district, the agency shall consider the wishes of governmental subdivisions within or surrounding the district, as expressed by resolution of their governing bodies.

(e) The state planning agency shall define the boundaries of planning districts in such manner that by [insert date] each of the governmental subdivisions of the state shall fall within the boundaries of a planning district. Upon formal promulgation of a planning district, the state planning agency shall notify the governing body of each governmental subdivision included within the district.

(f) The state planning agency shall make studies and surveys of the boundaries of planning districts on a continuing basis, either on its own initiative or upon formal application for the establishment of a planning district commission as provided in section 13. From time to time, the agency may adjust the boundaries of the planning districts, giving consideration to the factors set forth in subsection (d) of this section.

Section 12. Use of State Planning Districts for Other Programs. State planning districts, established pursuant to section 11 of this act, shall be used, to the extent feasible, as the basis for designating districts for the administration of state programs. Such districts shall also, to the extent possible, be used as the basis for proposing or designating areas for the purposes of the following federal acts:

(1) the Economic Opportunity Act of 1964;

(2) Section 403 of the Public Works and Economic Development Act of 1965;

(3) Section 301 of the Appalachian Redevelopment Act of 1965;

(4) Section 701 of the Housing Act of 1954, as amended; and

(5) such other federal acts which authorize financial assistance and require, or permit, the formation of districts for undertaking fiscal, economic, and human resource planning and development programs.

Section 13. Planning District Commissions. (a) *Formation.* At any time after the establishment of a planning district, pursuant to section 11 of this act, the governmental subdivisions embracing the majority of the population within the district, acting through their governing bodies, may organize a planning district commission by written agreement among them, subject to approval by the state planning agency. Any governmental subdivision within the planning district not a party to such agreement shall continue as part of the planning district, but until such governmental subdivision elects to become a part of the planning district commission, as hereafter provided, shall not be represented in the membership of the planning district commission.

(b) *The Agreement.* The agreement shall set forth:

(1) the name of the planning district;

(2) the governmental subdivision in which its principal office shall be situated;

(3) the effective date of the organization of the planning district commission;

(4) the membership of the planning district commission, at least a majority, but not more than [two-thirds], of which shall be representatives of participating governments, or stipulated combinations thereof. The other members shall be residents of the district who have demonstrated outstanding leadership in community affairs. In addition, a representative of state government may be designated by the governor as a [voting] [nonvoting] member of the Commission. The total number of members and their terms shall be specified in the agreement;

(5) the formula by which participating governments shall contribute to the financing of the Commission; and

(6) the procedure for amendment, for addition of other governmental subdivisions within the planning district which are not parties to the original charter agreement, and for the withdrawal from the charter agreement by a governmental subdivision.

(c) *Status.* A planning district commission shall be a public body corporate and politic. It may perform the planning and other functions provided by this section, and exercise all other powers incidental thereto.

(d) *Purpose.* The purpose of a planning district commission is to promote the orderly and efficient development of the physical, social and economic resources of the district by planning and by encouraging and assisting governmental subdivisions to plan for the future.

(e) *Area of Jurisdiction.* The area of operation of a planning district commission shall be coterminous with the area of the planning district as defined or redefined by the state planning agency.

(f) *Powers and Duties.* Without in any manner limiting or restricting the general powers conferred by this act, the planning district commission may:

(1) adopt and have a common seal and alter the same at pleasure;

(2) sue and be sued;

(3) adopt bylaws and make rules and regulations for the conduct of its business;

(4) make and enter into all contracts or agreements necessary or incidental to the performance of its duties;

(5) borrow money and apply for and accept advances, loans, grants, contributions and any other form of assistance from the federal government, the state, or other public body, or from any sources, public or private, for the purposes of this act, and give such security as may be required and enter into and carry out contracts or agreements in connection therewith; and include in any contract for financial assistance with the federal government such conditions imposed pursuant to federal laws as it may deem reasonable and appropriate and which are not inconsistent with the purposes of this act;

(6) prepare a comprehensive plan and functional plans for the guidance of the development of the district;

(7) as hereinafter provided, review any applications to agencies of the state or Federal Government for loans or grants-in-aid for projects by governmental subdivisions within the planning district;

(8) review local plans, proposals for projects, and ordinances having an impact outside the boundaries of the local government subdivisions and within the planning district;

(9) employ a director, engineers, attorneys, planners, consultants and other employees, and prescribe their powers and duties and fix their compensation;

(10) prepare, and from time to time revise, recommended zoning, subdivision, platting, building code, and other appropriate regulations which would implement the comprehensive plan developed by the Commission;

(11) prepare studies of the region's resources with respect to existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public services, local governments, and any other matters which are relevant to regional planning;

(12) collect, process, and analyze at regular intervals the social and economic statistics for the region which are necessary to planning studies and make the results available to the general public;

(13) participate with other government agencies, educational institutions, and private organizations in the coordination of the research activities defined above;

(14) cooperate with and provide planning assistance to county, municipal, and other local governments, instrumentalities, or planning agencies within the region, and coordinate regional area planning with planning activities of the state and of the counties, municipalities, special districts, or other local governmental units within the region as well as neighboring regions and with the programs of federal departments and agencies;

(15) provide information to officials in state departments, agencies, and instrumentalities; to federal, and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the comprehensive plan and the functions of regional and local planning, and in order to stimulate public interest and participation in the orderly, integrated development of the region; and

(16) execute any and all instruments and do and perform any and all acts or things necessary, convenient, or desirable for its purposes or to carry out the powers expressly given in this section.

(g) *Organization and Committees.* The commission shall elect a chairman from among its members and shall publish rules and establish committees to carry on its work. Such committees may have as members persons other than members of the commission and other than elected officials. The commission shall meet as often as necessary but no less than four times a year.

(h) *Director and Staff.* The commission shall appoint a director who shall be qualified by training and experience and shall serve at the pleasure of the commission. The director shall be the chief administrative and planning officer and regular technical advisor of the commission and shall appoint and remove the staff of the commission. The director may make agreements with local planning agencies, within the jurisdiction of the planning district commission, for temporary transfer or joint use of staff employees and may contract for professional or consultant services from other governmental and private agencies.

(i) *Comprehensive Plan.* (1) Each planning district commission shall prepare, adopt, and from time to time revise or amend a comprehensive plan for the development of the district. The plan shall guide a coordinated, adjusted, efficient and economic development of the district which will, in accordance with present and future needs and resources, best promote the health, safety, order convenience, prosperity and welfare of the citizens, provide for patterns of urbanization and the uses of land and resources for trade, industry, recreation, forestry, agriculture, and tourism, and create conditions favorable to the development of human resources, and otherwise promote the general welfare of the citizens. Such plan shall identify the public interest and the necessity for public action and intergovernmental cooperation within the district and shall be coordinated with the efforts of the private sector within the district. The comprehensive plan shall embody the policy recommendations of the planning district commission and shall include, but not be limited to:

(i) a statement of the objectives, standards, and principals sought to be expressed in the plan;

(ii) recommendations for the most desirable pattern and intensity of general land use within the region in the light of the best available information concerning natural environmental factors, the present and prospective economic and demographic basis of the area, and the relation of land use within the area to land use in the adjoining areas. The land use pattern shall provide for open space as well as urban, suburban, and rural development, and shall include classification of urban development into major components of resident, industry, commerce, and parks;

(iii) recommendations for the general circulation pattern for the area including land, water, and air transportation and communication facilities whether used for movement within the area or to and from adjoining areas;

(iv) recommendations concerning the need for and proposed general location of public and private works and facilities which by reason of their function, size, extent, or for any other cause are of a regional as distinguished from purely local concern;

(v) recommendation for the long range programming and financing of capital projects and facilities;

(vi) recommendations for meeting housing needs of existing and prospective in-migrant population of the region;

(vii) recommendations for the development of programs and improvements within the region for health services, manpower planning, employment opportunity, education, elimination of poverty, and law enforcement, taking into account the purpose, nature, and methods of regional physical planning programs; and

(viii) such other recommendations as it may deem appropriate concerning current and impending problems as may affect the district.

(2) Before the comprehensive plan shall be adopted it shall be submitted to the state planning agency and to the local planning commission, or if there be none, to the governing body, of each governmental subdivision within the district, for a period of not less than thirty days prior to a hearing to be held by the planning district commission thereon after adequate notice. The state planning agency shall make recommendations to the planning district commission, on or before the date of said hearing, for its modification where deemed necessary to achieve conformity with state plans and policies issued by the state planning agency on behalf of the governor, and shall make any findings required by subsection (b) of section (10). A local planning commission may make recommendations to the

planning district commission with respect to the effect of the plan within its governmental subdivision on or before the date of said hearing.

(3) Upon approval of the comprehensive plan by a planning district commission after the public hearing, it shall be submitted to the governing body of each governmental subdivision within the district for adoption and, upon adoption thereof by the governing bodies of a majority of such governmental subdivisions, the comprehensive plan shall become effective with respect to all action of a planning district commission.[1]

(4) When the comprehensive plan is adopted, the planning district commission shall not establish any policies or take any action which is not in conformity therewith.

(5) The comprehensive plan shall become effective with respect to the actions of the governing body of any governmental subdivision within the district upon its adoption by such governing body. When the comprehensive plan shall have become effective in any governmental subdivision, such governmental subdivision shall not proceed with the construction of any public improvement or public institutions, or with the acquisition of any land for public purposes, or the disposition of any public land, in conflict with the district plan.

(6) The comprehensive plan may be amended in the same manner as provided for the original adoption, but if the planning district commission determines that a proposed amendment has less than districtwide effect such amendment may be submitted only to the local planning commissions and governing bodies of those governmental subdivisions which the planning district commission shall determine to be affected.

(j) *Cooperation.* A planning district commission may cooperate with other planning district commissions or the legislative and administrative bodies and officials of other districts or governmental subdivisions, within or outside a district, so as to coordinate the planning and development of a district with plans of other districts and governmental subdivisions and the state. A planning district commission may appoint committees and adopt rules as needed to effect such cooperation. A planning district commission shall also cooperate with the state planning agency and use information furnished by it and by other state and federal officials, departments and agencies. State and local officials, departments, and agencies having information, maps, and data pertinent to planning and development of a district may make the same, together with services and funds, available for use of a planning district commission.

Section 14. Authorization for Appropriations to Planning District Commissions. The governing bodies of the governmental subdivisions within a planning district may appropriate or lend funds to the planning district commission.

[1] Some states may wish to require action by the governing bodies of participating jurisdictions for final adoption of a district commission comprehensive plan. Under the provisions of paragraph (4) of this subsection, such actions by local jurisdictions would make the plan binding upon them.

Section 15. State Aid. A planning district commission may receive state financial support. State aid shall not exceed $[ ] for each [25,000] persons residing in the governmental subdivisions which are parties to the charter agreement, but in any event shall not be less than $[ ] for any planning district commission. In order to be eligible for state aid, a planning district commission shall prepare and submit annually to the governor, in such manner as he shall direct, a budget showing its estimated receipts and expenditures for the next fiscal year. After review of such budget, the governor shall, subject to the availability of funds, allocate such amount as will enable the planning district commission to carry out its functions.

Section 16. Review of Grant-in-Aid Applications. (a) In each planning district in which a planning district commission has been organized, the governing body of each governmental subdivision shall, before such application is submitted to the state or federal agency, submit to the planning district commission, for review, any application to agencies of the state or Federal Government for loans or grants-in-aid for projects.

(b) The planning district commission shall advise a governmental subdivision within [ten] days of the date of the submission of the application as to whether or not the proposed project for which funds are requested has a significant impact outside the local borders. If it does not have such an impact, the planning district commission shall certify that it is not in conflict with the district plan or policies. If it does have such an impact, the planning district commission shall determine, within [forty] days from the date of the submission of the application, whether or not it is in conflict with the district plan or policies. In making such determination it may also consider whether the proposed project is properly coordinated with other existing or proposed projects within the district. [Only upon a finding by the planning district commission that the project is not in conflict with the district plan or policies, may the application be forwarded by the subdivision to the appropriate state or federal agency.]

Section 17. Planning District Commission Review of Proposed Local Plans, Projects, and Ordinances. Planning district commissions may [require] [request][1] local governments to submit all proposed local government comprehensive land use, circulation, and public facilities plans; proposals for public works projects; zoning and subdivision regulations; official maps and building codes, and all amendments and revisions thereof, when such plans, proposals, and ordinances have an impact outside their local borders; may review such plans, proposals, and ordinances for conformity with planning district commission comprehensive plans and with state plans and policies issued by the planning agency on behalf of the governor; and may make recommendations within [thirty] days for their modification where deemed necessary to achieve conformity.

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[1] In deciding whether to authorize Planning District Commissions to require or merely to request local governments to submit plans, proposals, and ordinances for review and recommendation as here provided, states will want to consider the status they wish to give regional planning in the state and the capability and readiness of the legislature to assume responsibility for approving all the necessary plans and policies to make the provisions of section 10 effective.

Section 18. Consideration of State Plans and Legislation Affecting Plans by Legislative Standing Committees [Joint Committees].

(a) [A standing committee in each branch of the state legislature] [A joint standing committee of the two branches of the state legislature] shall be assigned responsibility for:

(1) reviewing the state comprehensive plan and functional plans, formulating proposed amendments thereto and for recommending action thereon by the [legislature]; and

(2) reviewing all relevant proposed state legislation for conformance with the state comprehensive plan and functional plans, including but not limited to such functional areas as highway construction, housing, mass transit facilities, airport development, open space, urban planning assistance, water and sewer facilities, public works planning, outdoor recreation, water and air pollution abatement, hospital and health facilities, and solid and liquid waste disposal systems.[1]

(3) Exercising legislative oversight with regard to the planning activities of the State in a manner comparable to that exercised by other standing committees over state activities within their respective jurisdictions.

(b) The provisions contained in this Section shall be considered as a rule of procedure in the Senate and [House of Representatives] until otherwise expressly provided.

Section 19. Separability Clause. **[Insert separability clause].**

Section 20. Effective Date. **[Insert effective date].**

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[1] The responsibilities enumerated in this section could be assigned to a present standing committee in each branch (or a joint committee) where appropriate ones exist, or new standing committees (or a joint committee) could be established.

14-42-00

STRONG EXECUTIVE BUDGET

The principal device for guiding the activities of State government is the budget. All but two States have adopted, to some extent, an executive budget system, but in many cases its effectiveness is vitiated by gaps in the overall picture of fiscal resources and needs, or by agency practices that contravene the authority of the governor. Furthermore, the executive power of the governor often is diluted by constitutional or statutory provisions for legislative participation in the preparation of the budget.

The executive budget system contemplates that the governor be given primary authority and responsibility for preparing a budget that reveals the full scope of all administrative programs and operations, and that the legislature review and render final judgment on the budget that the governor presents. The governor and the legislature should be cognizant of all funds from every source available to State agencies. Earmarked funds should be reflected in the analysis accompanying the budget presentation, even though their expenditure is not subject to ordinary executive or legislative controls. In the model budget law which follows, the governor presents to the legislature a comprehensive budget for all state programs. This draft legislation assumes that the State's higher education system is not constitutionally independent of the executive budget process, although in some States the university system has separate constitutional status.

All budget requests should be channelled exclusively through the governor. In some States, the legislature receives the agency estimates at the same time the governor does. In many States, agencies are free to argue for their original requests in hearings before legisative committees. Either situation is undersirable to the extent that it permits the administrative agencies to piay off the legislature against the governor.

After the legislature has made an appropriation, the governor should have authority to transfer funds within an agency from one purpose to another, as provided in the draft bill. This is a necessary fiscal tool which permits the chief executive to make adjustments to meet changing circumstances.

The suggested legislation assigns to the governor the final responsibility for budget preparation. Although the model bill does not include provisions for specific administrative organization, it anticipates that the budget personnel would be an integral part of the governor's staff.

In view of the growing emphasis on the development of the so-called "Planning, Programming, and Budgeting System," the proposed bill calls for the governor to present to the legislature a budget and supporting information that is related to comprehensive state program and fiscal planning.[1]

A constitutional amendment may be needed in some States to assure that the governor has full authority for budget preparation and execution. A suggested amendment, based on the Missouri Constitution, follows the draft legislation.

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[1] The Advisory Commission on Intergovernmental Relations has developed draft legislation on state planning which contains a provision designating the governor as the state planning authority. Considered jointly, the budget and planning bills provide the basis for gubernatorial coordination of administrative policy-making and execution.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to Provide for a Comprehensive System for State Program Budgeting and Financial Management."]

(Be it enacted, etc.)

Section 1. Short Title. This act may be cited as "The Executive Budget Act."

Section 2. Statement of Policy. It is the purpose of this act to establish a comprehensive system for state program and financial management which furthers the capacity of the governor and legislature to plan and finance the services which they determine the state will provide for its citizens. The system shall include procedures for:

(1) The orderly establishment, continuing review and periodic revision of the program and financial goals and policies of the state.

(2) The development, co-ordination and review of long-range program and financial plans that will implement established state goals and policies.

(3) The preparation, co-ordination and analysis, and enactment of a budget organized to focus on state services and their costs, that authorizes the implementation of policies and plans in the succeeding budget period.

(4) The evaluation of alternatives to existing policies, plans and procedures that offer potential for more efficient or effective state services.

(5) The regular appraisal and reporting of program performance.

Section 3. Responsibilities of the Governor. The Governor shall direct the preparation and administration of the state budget. He shall evaluate the long-range program plans, requested budgets and alternatives to state agency policies and programs; and formulate, and recommend for consideration by the legislature, a proposed comprehensive program and financial plan which shall cover all estimated receipts and expenditures of the state government, including all grants, loans, and moneys received from the Federal government. Proposed expenditures shall not exceed estimated receipts and surpluses.

Section 4. Responsibilities of the Legislature. The legislature shall:

(1) Consider the program and financial plan recommended by the Governor, including proposed goals and policies, recommended budget, revenue proposals, and proposed long-range program plans.

(2) Adopt programs and alternatives to the plan recommended by the Governor it deems appropriate.

(3) Adopt legislation to authorize the implementation of a comprehensive program and financial plan.

(4) Provide for a postaudit of financial transactions, program accomplishments and execution of legislative policy direction.

Section 5. Responsibilities of [state budget agency]. **The [state budget agency] shall:**

(1) Assist the Governor in the preparation and explanation of the proposed comprehensive program and financial plan, including the co-ordination and analysis of state agency program goals and objectives, program plans and program budget requests.

(2) Develop procedures to produce the information needed for effective policy decision-making.

(3) Assist state agencies in their statement of goals and objectives, preparation of program plans, program budget requests and reporting of program performance.

(4) Administer its responsibilities under the program execution provisions of this act so that the policy decisions and budget determinations of the Governor and the legislature are implemented to the fullest extent possible within the concepts of proper management.

(5) Provide the legislature with any budget information it may request.

Section 6. Agency Program and Financial Plans. **(a) Each state agency, [other than the legislature and the courts], on the date and in the form and content prescribed by the [state budget agency], shall prepare and forward to the [state budget agency] the following program and financial information:**

(1) The goals and objectives of the agency programs, together with proposed supplements, deletions and revisions.

(2) Its proposed plans to implement the goals and objectives including estimates of future service needs, planned methods of administration, proposed modification of existing program services and establishment of new program services, and the estimated resources needed to carry out the proposed plan.

(3) The budget requested to carry out its proposed plans in the succeeding fiscal [year]. The budget request information shall include the expenditures during the last fiscal [year], those estimated for the current fiscal [year], those proposed for the succeeding fiscal [year], an explanation of the services to be provided, the need for the services, the costs of the services, and any other information requested by the [state budget agency].

(4) A report of the receipts during the last fiscal year, an estimate of the receipts during the current fiscal [year], and an estimate for the succeeding fiscal [year].

(5) A statement of legislation required to implement the proposed programs and financial plans.

(6) An evaluation of the advantages and disadvantages of specific alternatives to existing or proposed program policies or administrative methods.

(b) The state agency proposals prepared under subsection (a) shall describe the relationships of their program services to those of other state agencies, of other governments, and of nongovernmental bodies.

(c) The [state budget agency] shall assist agencies in the preparation of their proposals under subsection (a). This assistance may include technical assistance; organization of materials; centrally collected accounting, budgeting and personnel information; standards and guidelines formulation; population and other required data; and any other assistance that will help the state agencies produce the information necessary for efficient agency management and effective decision-making by the Governor and the legislature.

(d) If any state agency fails to transmit the program and financial information provided under subsection (a) on the specified date, the [state budget agency] may prepare such information.

(e) The [state budget agency] shall compile and submit to the Governor-elect in any year when a new Governor has been elected, not later than November 20, a summary of the program and financial information prepared by state agencies.

Section 7. Governor's Recommendation. (a) The Governor shall formulate the program and financial plan to be recommended to the legislature after considering the state agency proposed program and financial plans, and other programs and alternatives that he deems appropriate. The plan shall include his recommended goals and policies, recommended plans to implement the goals and policies, recommended budget for the succeeding fiscal [year], and recommended revenue measures to support the budget.

(b) The Governor shall present the proposed comprehensive program and financial plan in a message to a joint session of the legislature on or before [February 15] prior to each fiscal [year]. The message shall be accompanied by an explanatory report which summarizes recommended goals, plans, and appropriations. The explanatory report shall be furnished each member of the legislature and each state agency on or before [February 15]. The report shall contain the following information:

(1) The co-ordinated program goals and objectives that the Governor recommends to guide the decisions on the proposed program plans and budget appropriations.

(2) The program and budget recommendations of the Governor for the succeeding fiscal [year].

(3) A summary of state receipts in the last fiscal [year], a revised estimate for the current fiscal [year], and an estimate for the succeeding fiscal [year].

(4) A summary of expenditures during the last fiscal [year], those estimated for the current fiscal [year], and those recommended by the Governor for the succeeding fiscal [year]; and

(5) Any additional information which will facilitate understanding of the Governor's proposed program and financial plan by the legislature and the public.

(c) After delivery of the Governor's message, the bills incorporating his recommendations may be introduced in either [both] house[s].

Section 8. Legislative Review. The legislature shall consider the Governor's proposed comprehensive program and financial plan; evaluate alternatives to the Governor's recommendations; and determine the comprehensive program and financial plan to support the services to be provided the citizens of the state, provided, however, that in such determination authorized expenditures shall not exceed estimated receipts and surpluses.

Section 9. Program Execution. (a) Except as limited by policy decisions of the Governor, appropriations by the legislature, and other provisions of law, the several state agencies shall have full authority for administering their program service assignments and shall be responsible for their proper management.

(b) Each state agency, [other than the legislature and the courts], shall prepare an annual plan for the operation of each of its assigned programs except for programs that are exempted from this requirement by the [state budget agency]. The operations plan shall be prepared in the form and content and be transmitted on the date prescribed by the [state budget agency].

(c) The [state budget agency] shall:

(1) Review each operations plan to determine that it is consistent with the policy decisions of the Governor and appropriations by the legislature, that it reflects proper planning and efficient management methods, that appropriations have been made for the planned purpose and will not be exhausted before the end of the fiscal year.

(2) Approve the operations plan if satisfied that it meets the requirements under paragraph (1). Otherwise the [state budget agency] shall require revision of the operations plan in whole or in part.

(3) Modify or withhold the planned expenditures at any time during the appropriation period if the [state budget agency] finds that such expenditures are greater than those necessary to execute the programs at the level authorized by the governor and the legislature, or that the receipts and surpluses will be insufficient to meet the authorized expenditure levels.

(d) No state agency, [except the legislature and the courts], may increase the salaries of its employees, employ additional employees, or expend money or incur any obligations except in accordance with law and with a properly approved operations plan.

(e) Appropriation transfers or changes as between objects of expenditures within a program may be made by the [head of a state agency]. Appropriation transfers or changes between programs within an agency may be made by the [Governor], and shall be reported to the legislature quarterly. No transfers shall be made between agencies.

(f) The [state budget agency] shall report quarterly to the Governor and the legislature on the operations of each state agency, relating actual accomplishments to those planned, and modifying, if necessary, the operations plan of any agency for the balance of the fiscal [year].

Section 10. Performance Reporting. **(a) Each state agency, [other than the legislature and the courts], shall submit a performance report to the [state budget agency] on or before [September 1] for the preceding fiscal [year]. These reports shall be in the form prescribed by the [state budget agency] after consultation with the [appropriate legislative agencies], and shall include statements concerning:**

(1) The work accomplished and the services provided in the preceding fiscal year or other meaningful work period, relating actual accomplishments to those planned under section 9(b).

(2) The relationship of accomplishments and services to the policy decisions and budget determinations of the governor and the legislature.

(3) The costs of accomplishing the work and providing the services, and, to the extent feasible, citing meaningful measures of program effectiveness and cost.

(4) The administrative improvements made in the preceding year, potential improvements in future years, and suggested changes in legislation or administrative procedures to make further improvements.

(b) The [state budget agency] shall summarize the performance reports and forward copies to each member of the legislature.

Section 11. Separability. **[Insert separability clause.]**

Section 12. Effective Date. **[Insert effective date.]**

14-42-00

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirement.]

Section 1. Governor's Budget and Recommendations as to Revenue. **The governor shall be the state budget authority and shall submit to the [legislature], at a time fixed by law, but not later than [10] days after it convenes in each regular [or budget] session,[1] a budget for the ensuing fiscal period, setting forth a complete plan of proposed expenditures [by program] of the state and all its agencies, together with the governor's estimate of available revenues and his recommendations for raising any additional revenues that may be needed.**

Section 2. Power of Partial Veto of Appropriation Bills; Procedure; Limitations. **The governor may disapprove or reduce one or more items of appropriation of money in any bill presented to him, while approving other portions of the bill. On signing the bill he shall append to it a statement of the items which he has disapproved or reduced, and these items or portions of items shall not take effect. If the [legislature] is in session he shall transmit to the house in which the bill originated a copy of the statement, and the items he has disapproved or reduced shall be reconsidered seaprately. If the [legislature] is not in session he shall transmit the bill within [forty-five] days to the office of the secretary of state with his approval or reasons for disapproval. The governor shall not reduce any appropriation below the amount necessary for the payment of principal and interest on the public debt.**

Section 3. Power of Governor to Control and Reduce Expenditures. **The governor, at his discretion, may control the rate at which any appropriation to a department or agency of the executive branch is expended during the period of the appropriation, by allotment, or other means, and may reduce the expenditures of any department or agency of the executive branch below the amounts appropriated.**

Section 4. **[All parts of the Constitution in conflict with this amendment are hereby repealed.] [Sections (identify those sections of the Constitution to be repealed) and hereby repealed.]**

Section 5. **[Insert appropriate language, consistent with the referendum requirements for amending the Constitution and with state election laws, for submission of the proposed amendment to electorate.]**

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[1] States should consider the desirability of an arrangement in the schedule for submitting the budget that will allow an incoming governor enough time, after his inauguration, to study the budget prepared by his predecessor, and to make changes that reflect his own plans and programs.

15-62-12

EXCHANGE OF TAX RECORDS AND INFORMATION

Administrative cooperation between federal, state and local tax administrations has had legislative and executive endorsement, in principle, at both state and federal levels for more than a generation. Its application, however, has been rather limited to date despite the significant dividends it can yield in terms of increased revenues, enforcement cost economies, and improved taxpayer compliance.

The case for intergovernmental cooperation among state and local tax administrations and between them and the federal government is self-apparent. Tax information assembled by one can be useful to one or more of the others. Moreover, just as taxpayers' respect for federal tax administration has complementary benefits for state administrations, so improved state and local tax enforcement eases the federal task. Conversely, each discouragement to under-reporting of federal tax liability increases the odds against under-reporting to state and local governments and vice versa.

The exchange of tax records and information among states and between the states and the Federal Internal Revenue Service is basic to intergovernmental efforts to secure better reporting by taxpayers. The Revenue Act of 1926 and subsequent Congressional enactments contain explicit authority for giving state tax officials access to federal tax returns. In some states, however, statutory authority for the exchange of tax information is limited and may even be completely lacking as to a specific tax.

Accordingly, states are urged to examine their existing statutes relative to the exchange of tax information with tax officials of other jurisdictions so as to insure that they are clear-cut and adequate. Consideration might also be given to the enactment of a generally applicable statute which would uniformly authorize the exchange of information as to all taxes imposed in the state instead of enacting such authority separately in connection with each different tax. The suggested legislation limits the exchange of information to jurisdictions which reciprocate the service and undertake to use the information solely for tax enforcement purposes.

Suggested Legislation

[Title should conform to state requirements]

(Be it enacted, etc.)

Section 1. **The [tax commissioner] at his discretion may furnish to the taxing officials of any other state and its political subdivisions, the political subdivisions of this state, the District of Columbia, the United States and its territories, [Canada and the Provinces of Canada] any information contained in tax returns and reports and related schedules and documents filed pursuant to the tax laws of this state, or in the report of an audit or investigation made with respect thereto, provided that said jurisdictions grant similar privileges to this state and provided further that such information is to be used only for tax purposes.**

Section 2. **The political subdivisions of this state may enter into agreements with the [Tax Commissioner] to provide for exchange of tax information authorized by Section 1 of this act.**

15-62-21

UNIFORM PERSONAL INCOME TAX STATUTE

The personal income tax represents the last under-utilized major revenue source for many states. About one-third of the states, including some in the most industrialized high-income sections of the country, do not tax personal incomes at all and one-third tax them at relatively low effective rates. The tax produces about $5 billion for the 35 states with income taxes. In contrast, state and local sales taxes produce about $11 billion and property taxes about $29 billion. In the aggregate the personal income tax provides only about 16 percent of all state and 10 percent of all state and local taxes. Therefore, most states now derive little benefit from the unique growth potential of this tax.

The personal income tax is the brightest prospective revenue source available to states for closing the gap between rising expenditure needs and the revenue productivity of their tax systems. Since World War II, state and local expenditures have been growing at the rate of 8 to 9 percent per year while the principal state and local revenue producers – general retail sales and property taxes – increase at only about half this rate and roughly in proportion to the gross national product. Greater reliance on personal income taxes will strengthen the revenue position of the states as the national economy continues to grow.

The personal income tax has other important attributes. It permits a larger share of the tax burden to be adjusted to the size of the family through an exemption system. It typically results in equal treatment of individuals and households with equal income, a characteristic that grows in importance as the margin between people's incomes and their consumer expenditures widens and as family homesteads become less and less indicative of tax-paying ability. The personal income tax also provides the most effective way for exempting the disadvantaged members in American society – the poor – from some of the growing burden of state and local taxes. This attribute takes on increasing importance as national policy objectives encompassed in the anti-poverty program gain dominance, as the significance of the state and local sector in total government operations increases, and as the weight of national payroll taxes to finance social security programs grows heavier.

The national government now obtains about $70 billion, more than half of its tax revenue, from the personal income tax. Of the American people's annual tax payments on their personal incomes, 92 percent is to the federal government, only 8 percent to state and local governments. The universality and dominance of the federal income tax has already prompted most income tax states to conform their income tax laws to the federal code in the interest of minimizing taxpayer inconvenience, and administrative costs. The prospect of increased state use of income taxation further underscores the case for conforming state personal income tax laws to the Federal Internal Revenue Code.

The definition of net income derived from business and professional activity lends itself uniquely to federal-state income tax conformity. The basic questions in this area are best resolved in accord with the rules of good business practice. The definition of net income from business operations is in fact, largely an exercise in articulating the rules of accountancy. Because federal law in this regard is already quite explicit, state independence with respect to the definition of net income can result in taxpayer inconvenience and administrative complexity. For this reason, the Advisory Commission on Intergovernmental Relations has recommended that the states endeavor to bring their income tax laws into harmony with the federal definition of adjusted gross income.

Aside from the special treatment of income from government obligations required by the doctrine of intergovernmental tax immunities, the income portion of most taxpayers' state returns could be completed by copying a single figure from the federal return (line 9 of Federal Form #1040), under the approach taken in this suggested legislation. States would, at the same time, retain the requisite flexibility with respect to determining personal deductions and exemptions as well as adjusted gross income modifications designed to promote tax equity, maximize the tax base, and minimize the likelihood of adverse effects on state tax revenues resulting from unforeseen changes in federal tax policy.

To facilitate the adoption of a state income tax law conforming in all essential respects to appropriate Federal Internal Revenue Code provisions, this suggested legislation incorporates in one comprehensive act the provisions necessary to deal consistently with partnerships, estates, trusts, beneficiaries, and decedents, as well as individuals. The legislation includes the definition of residence (section 1 (b)) recommended by the Advisory Commission for adoption by all income tax states in order to preclude multiple taxation and to eliminate tax avoidance. It also contains a provision (title II, part I, section 11) for crediting residents of the state for income tax paid another state, a practice now followed by two-thirds of the income tax states in the interest of consistency with tax collection at the source and the avoidance of double taxation of the same income.

The ultimate objective of federal-state income tax comity is a condition that would enable the taxpayer to satisfy both state and federal filing requirements with a single tax retrun. The realization of such a goal, however, is unlikely without state and federal authority to experiment on a limited geographical basis. The Advisory Commission has recommended that in order to encourage expermentation with federal collection of state income taxes, the Congress authorize the Internal Revenue Service and that the legislatures of states using personal income taxes authorize their governors, to enter into mutually acceptable agreements for federal collection of state income taxes. At least one State, Nebraska, has provided authority for its tax officials to negotiate with federal authorities for the collection of the State's income tax. Congress has not yet provided similar authority at the Federal level.

Continuing revenue pressures, against the background of the recent substantial increases in property tax rates, are enhancing local government interest in other tax sources, including the individual income tax. Local governments in eight states (Alabama, Kentucky, Maryland, Michigan, Missouri, New York, Ohio, and Pennsylvania) may impose income taxes. The first six-mentioned states also levy state personal income taxes but the number of their localities using income taxes is quite limited (except in Maryland, where all 23 counties and the City of Baltimore levy a supplement to the state personal income tax). Ohio, and Pennsylvania, neither of which levies a state personal income tax, have permitted local income taxation to proliferate. The states have a useful and significant coordinating role to play in the administration of local income taxes as well as in other nonproperty taxes, as noted elsewhere in these state legislative proposals. (See *State Broad Based Sales Tax, 15-62-30.*)

While income taxes are preferable to sales and many other types of taxes because they can be structured to distribute their burden in conformity with ability to pay and with necessary regard for the taxpayer's family obligations, they have important limitations for use at the local level. These limitations grow more compelling as the economies of the different sections of the country become more and more interdependent. Increasingly, out people live in one jurisdiction and work in another. Increasingly, our people supplement their wages and salaries from local sources with investment and earned income from other parts of the state and from other states. In deference to these considerations local jurisdictions that now use these taxes generally limit them to income from wages and salaries. In doing so, they forego some of the advantages of the income tax in terms of ability to pay.

These kinds of considerations explain the Advisory Commission's preference for state rather than locally imposed personal income taxes. Local jurisdictions' need for revenue to supplement those from property, sales, and other local tax sources are best met by state financial aid allocated with appropriate regards for variations in local needs and fiscal resources.

Where it is desired to supplement local resources with revenues from a tax on personal incomes and this cannot be effectuated through a state levy, income taxes imposed below the state level are a possible alternative. Such taxes, however, are preferably levied over as large an area as possible, ideally coinciding with the boundaries of the economic or metropolitan area and as a supplement ("piggy-back") to the state's tax and collected with it. The county meets this area requirement where its boundaries coincide with the boundaries of a metropolitan area.

In multi-county economic or metropolitan areas, the preferred method is a uniform income tax applicable to the entire area. In these cases, as in the case of a countywide tax shared with incorporated and unincorporated jurisdictions, the division of collections is likely to pose difficulties. Such difficulties could be avoided by reserving the proceeds of the income tax for financing a significant areawide program or function in which the constituent jurisdictions have a common interest, as for example, in higher education, recreation, or water supply. Where the direct use of income tax collections for a common program or function is not practicable, a sharing between the jurisdiction of employment and the jurisdiction of residence, as in Michigan, is a reasonable second choice. It is incontrovertible, however, that the smaller the income tax jurisdiction the more difficult it becomes to satisfy the dictates of tax fairness. While the state can protect its taxpayers with multi-state income tax sources against double taxation through tax credits and other arrangements, this is impracticable with respect to double taxation by local jurisdictions without jeopardy to the administrative ease and efficiency objectives of the local supplement device. The suggested legislation provides for a multi-county personal income tax supplement to the state income tax (title IX). States desiring to reserve their revenue yield for an areawide program or function could do so by an appropriate modification of section 123. In single county taxing areas, the certification provisions of section 120 can be appropriately modified.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. (a) *Imposition and Rate of Tax.* A tax is hereby imposed for each taxable year on the entire taxable income of every resident of this state and on the taxable income of every nonresident which is derived from sources within this state. The amount of the tax shall be determined in accordance with the following table:

If the taxable income is:	The tax is:
Not over $[ ]	[ ]% of the taxable income
Over $[ ] but not over $[ ]	$[ ] plus [ ]% of the excess over $[ ]
Over $[ ] but not over $[ ]	$[ ] plus [ ]% of the excess over $[ ]

(b) *Resident and Nonresident Defined.* For purposes of this act:

(1) A resident of this state means an individual who is domiciled in this state unless he maintains no permanent place of abode in this state and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than thirty days of the taxable year in this state; or who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than 183 days of the taxable year in this state.

(2) A nonresident means an individual who is not a resident of this state.

(c) *Cross References:* For application of the tax to estates and trusts, see title V; for application to partnerships, title VI.

Section 2. Joint Return or Return of Surviving Spouse. In the case of a joint return of a husband and wife, the tax imposed by section 1 shall be twice the tax which would be imposed if the taxable income were cut in half. For purposes of this section, section 3 (optional tax) and section 8 (standard deduction), a return of a suviving spouse shall be treated as a joint return of husband and wife.

Section 3. Optional Tax. (a) *Option to Elect in Lieu Tax.* In lieu of the tax imposed by section 1, there is hereby imposed for each taxable year on the taxable income of every individual whose adjusted gross income for such year is less than $5,000, or in the case of a married couple filing a joint return for such year whose adjusted gross income is less than $10,000, and who has elected for such a year to pay the tax imposed by this section, a tax as follows:

(Insert appropriate tables)

(b) *Manner of Election.* The election referred to in subsection (a) shall be made in the manner provided in regulations prescribed by the [tax commissioner].

(c) *Separate Returns.* A husband or wife may not elect to pay the optional tax imposed by this section if the tax of the other spouse is determined under section 1 on the basis of taxable income computed without regard to the standard deduction.

(d) *Optional Tax Does Not Apply.* The optional tax imposed by this section does not apply to any individual who is ineligible to elect the optional tax provided in the Internal Revenue Code of the United States, nor to estates or trusts.

(e) *Determination of Taxable Income.* In the case of a taxpayer who makes the election referred to in this section, taxable income means adjusted gross income as modified by section 6 less the standard deduction provided in section 8 and the deduction for personal exemptions provided in section 10.

Section 4. Meaning of Terms. Any term used in this act shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference in this act to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective, at any time or from time to time, for the taxable year.

(Alternate form – to avoid invalidity on the ground
of illegal delegation)

Section 4. Meaning of Terms. Any term used in this act shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference in this act to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, in effect on [December 31, 19] and other provisions of the laws of the United States relating to federal income taxes in effect on [December 31, 19], or at the option of the taxpayer it shall mean the provisions of the Internal Revenue Code of 1954 and amendments thereto and other provisions of the laws of the United States relating to federal income taxes as they may be in effect for the taxable year.

TITLE II

COMPUTATION OF TAXABLE INCOME

Part I - Resident Individuals

Section 5. Taxable Income. The entire taxable income of a resident of this state shall be his federal adjusted gross income as defined in the laws of the United States with the modifications and less the deductions and personal exemptions provided in this part.

Section 6. Modifications. (a) *Additions.* There shall be added to federal adjusted gross income: (1) interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof (other than this state and its political subdivisions and authorities); and (2) interest or dividends on obligations of any authority, commission, instrumentality, territory or possession of the United States which by the laws of the United States are exempt from federal income tax but not from state income taxes.

(b) *Subtractions.* There shall be subtracted from federal adjusted gross income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, provided that the amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses including amortizable bond premiums are deductible in determining federal adjusted gross income.

(c) *Fiduciary Adjustment.* There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share of the fiduciary adjustment determined under section 34.

(d) *Cross Reference.* For modifications required to be made by a partner relating to items of income, gain, loss or deduction of a partnership, see title VI.

Section 7. Deduction. The deduction of a resident individual shall be his standard deduction unless he elects to itemize his deductions as provided in section 9.

Section 8. Standard Deduction. The standard deduction of a resident individual or of a resident husband and wife who file a joint return shall be 10 percent of his or their adjusted gross income as modified by this part, or $1,000, whichever is less. The standard deduction of a married person who files a separate return shall not exceed $500.

Section 9. Itemized Deductions. (a) *General.* If a resident individual has itemized his deductions from adjusted gross income in determining his federal taxable income, he may elect in determining his taxable income under this act to deduct the sum of such itemized deductions (other than deductions for personal exemptions):

(1) Reduced by any amount thereof representing (i) income taxes imposed by this state or any other taxing jurisdiction and (ii) interest or expenses incurred in the production of income exempt from tax under this act and

(2) Increased by the amount of interest or expense incurred in the production of income taxable under this act but exempt from federal income tax (and which has not been deducted in determining federal adjusted gross income).

(b) *Husband and Wife.* A husband and wife, both of whom are required to file returns under this act shall be allowed to itemize their deductions only if both elect to do so. The total of itemized deductions of a husband and wife whose federal taxable income is determined on a joint return but whose taxable incomes are determined separately for purposes of this act, may be taken by either or divided between them as they may elect.

Section 10. Personal Exemptions and Credits. (a) *Personal Exemptions.* A resident shall be allowed an exemption of $[600] for each exemption to which he is entitled for the taxable year for federal income tax purposes.

(b) *A Credit for Sales Tax Paid on Food [and Drugs]*. (1) *General.* There shall also be allowed to resident individuals as a credit against the tax imposed by this act, a food [and drug] sales tax credit equal to $[ ][1] multiplied by the number of allowable personal exemptions claimed for individuals who are residents, exclusive of the extra exemptions allowable for age or blindness. A refund shall be allowed to the extent that the food [and drug] sales tax credit exceeds the income tax payable by the resident individual for the taxable year.

(2) *Limitation on Claim.* No individual who may be claimed as a personal exemption on another individual's return shall be entitled to a food [and drug] sales tax credit or refund for himself. If a food [and drug] sales tax credit or refund is claimed on more than one return for the same individual, the [tax commissioner] is authorized to determine the individual entitled to claim the credit or refund provided herein.

(3) *Exemptions Prorated.* If personal exemptions are prorated under other provisions of this act, then the food [and drug] sales tax credit or refund shall be proportionately prorated.

(4) *Sales Tax Presumed Paid.* Any individual, other than a person who for more than six months of the taxable year is a resident patient or inmate of a public institution or an organization exempt from tax as a charitable institution, who maintains a permanent place of abode within this state,

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[1] E.g., $6 where sales tax is 2%; $9 where sales tax is 3%; $12 where sales tax is 4%.

spending in the aggregate more than 6 months of the taxable year within this state, shall be conclusively presumed to have paid or paid with respect to such personal exemptions retail sales and use taxes imposed by this state equal to the maximum food [and drug] sales tax credit allowable.

(5) *Procedure for Credit of Refund of Tax.* The credits or refunds for sales taxes allowed by this section shall be claimed on the income tax returns provided for in this act, or in the case of an individual not having taxable income in this state on such forms or claims for refunds as the [tax commissioner] shall prescribe.

Section 11. Credit for Income Tax Paid to Another State. (a) *Resident Individual.* A resident individual shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax imposed on him for the taxable year by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein and which is also subject to tax under this act.

(b) *Limitation on Credit.* The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to his entire adjusted gross income as modified by this part.

Section 12. Dual Residence; Reduction of Tax. If the taxpayer is regarded as a resident both of this state and another jurisdiction for purposes of personal income taxation, the [tax commissioner] shall reduce the tax on that portion of the taxpayer's income which is subjected to tax in both jurisdictions solely by virtue of dual residence, provided that the other taxing jurisdiction allows a similar reduction. The reduction shall be in an amount equal to that portion of the lower of the two taxes applicable to the income taxed twice which the tax imposed by this state bears to the combined taxes of the two jurisdictions on the income taxed twice.

Part II - Nonresident Individuals

Section 13. Nonresident Individuals-Taxable Income. The taxable income of a nonresident individual shall be that part of his federal adjusted gross income derived from sources within this state determined by reference to section 15 less the deductions and personal exemptions provided in this part.

Section 14. Husband and Wife. (a) *Separate Federal Return.* If the federal taxable income of husband or wife (both nonresidents of this state) is determined on a separate federal return, their taxable incomes in this state shall be separately determined.

(b) *Joint Federal Return.* If the federal taxable income of husband and wife (both nonresidents) is determined on a joint federal return, their tax shall be determined in this state on their joint taxable income.

(c) *One Spouse a Nonresident.* If either husband or wife is a nonresident and the other a resident, separate taxes shall be determined on their separate taxable incomes in this state on such forms as the [tax commissioner] shall prescribe unless both elect to determine their joint taxable income in this state as if both were residents. If a husband and wife file a joint federal income tax return but determine their taxable income in this state separately, they shall compute their taxable incomes in this state as if their federal adjusted gross incomes had been determined separately.

Section 15. Adjusted Gross Income From Sources In This State. (a) *General.* The adjusted gross income of a nonresident derived from sources within this state shall be the sum of the following: (1) the net amount of items of income, gain, loss, and deduction entering into his federal adjusted gross income which are derived from or connected with sources in this state including (i) his distributive share of partnership income and deductions determined under section 43 and (ii) his share of of estate or trust income and deductions determined under section 39, and (2) the portion of the modifications described in section 6 (a) and (b) which relate to income derived from sources in this state, including any modifications attributable to him as a partner.

(b) *Attribution.* Items of income, gain, loss, and deduction derived from or connected with sources within this state are those items attributable to: (1) the ownership or disposition of any interest in real or tangible personal property in this state; and (2) a business, trade, profession, or occupation carried on in this state.

(c) *Intangibles.* Income from intangible personal property including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state.

(d) *Deductions for Losses.* Deductions with respect to capital losses, net long-term capital gains, and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources in this state, under regulations to be prescribed by the [tax commissioner] but otherwise shall be determined in the same manner as the corresponding federal deductions.

(e) *Small Business Corporation.* For a nonresident individual who is a shareholder of a corporation which is an electing small business corporation for federal income tax purposes, the undistributed taxable income of such corporation shall not constitute income derived from sources within this state and a net operating loss of such corporation shall not constitute a loss or deduction connected with sources in this state.

(f) *Apportionment and Allocation.* If a business, trade, profession, or occupation is carried on partly within and partly without this state, the items of income and deduction derived from or connected with sources within this state shall be determined by apportionment and allocation under regulations to be prescribed by the [tax commissioner].

(g) *Service in Armed Forces.* Compensation paid by the United States for service in the armed forces of the United States performed by a nonresident shall not constitute income derived from sources within this state.

Section 16. Standard Deduction. The standard deduction of a nonresident individual or husband and wife who file a joint return shall be 10 percent of his or their adjusted gross income from sources within this state or $1,000, whichever is less. The standard deduction of a nonresident married person who files a separate return shall not exceed $500.

Section 17. Itemized Deductions. (a) *General.* If the federal taxable income of a nonresident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his itemized deductions connected with income derived from sources within this state in lieu of taking the standard deduction. Subject to the limitation in subsection (b), the itemized deductions of a nonresident individual shall be the same as for a resident individual determined under section 9. A husband and wife both of whom are required to file returns under this act shall be allowed to itemize deductions connected with income derived from sources within this state only if both elect to itemize their deductions.

(b) *Limitation.* If the amount of adjusted gross income a nonresident individual would be required to report under section 5 if he were a resident, exceeds by more than $100 the amount of adjusted gross income he receives from sources within this state, his itemized deductions shall be limited by the percentage which his adjusted gross income from sources within this state is to the adjusted gross income he would be required to report if he were a resident. For purposes of this apportionment, a nonresident individual may elect to treat his federal adjusted gross income as adjusted gross income from sources within this state unless the amount of the modifications increasing federal adjusted gross income under section 6 would exceed $100.

Section 18. Personal Exemptions. A nonresident individual shall be allowed the same personal exemptions allowed to resident individuals under section 10 (i).

TITLE III

WITHHOLDING OF TAX

Section 19. Employer to Withhold Tax from Wages. (a) *General.* Every employer maintaining an office or transacting business within this state and making payment of any wages taxable under this act to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this act with respect to the amount of such wages included in his adjusted gross income during the calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the [tax commissioner]. This section shall not apply to payments by the United States for service in the armed forces of the United States.

(b) *Withholding Exemptions.* For purposes of this section:

(1) An employee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a different number of withholding exemptions in this state;

(2) The amount of each exemption in this state shall be $[600] whether the individual is a resident or a nonresident.

(c) *Withholding Agreements.* The [tax commissioner] may enter into agreements with the tax departments of other states (which require income tax to be withheld from the payment of wages and salaries) so as to govern the amounts to be withheld from the wages and salaries of residents of such states under provisions of this chapter. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under regulations prescribed by the [tax commissioner], may relieve employers in this state from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

Section 20. Information Statement for Employee. Every employer required to deduct and withhold tax under this act from the wages of an employee, or who would have been required so to deduct and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect to the wages paid by such employer to such employee during the calendar year on or before February 15 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of wages is made, a written statement as prescribed by the [tax commissioner] showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the [tax commissioner] shall prescribe.

Section 21. Credit for Tax Withheld. Wages upon which tax is required to be withheld shall be taxable under this chapter as if no withholding were required, but any amount of tax actually deducted and withheld under this chapter in any calendar year shall be deemed to have been paid to the [tax commissioner] on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

For a taxable year of less than 12 months, the credit shall be made under regulations of the [tax commissioner].

Section 22. Employer's Return and Payment of Tax Withheld. (a) *General.* Every employer required to deduct and withhold tax under this act shall, for each calendar quarter, on or before the fifteenth day of the month following the close of such calendar quarter, file a withholding return as prescribed by the [tax commissioner] and pay over to the [tax commissioner] or to a depositary designated by the [tax commissioner], the taxes so required to be deducted and withheld, except that for the fourth quarter of the calendar year, the return shall be filed and the taxes paid on or before January 31 of the succeeding year. Where the aggregate amount required to be deducted and withheld by any employer for a calendar month exceeds $[500], the employer shall by the fifteenth day of the succeeding month pay over such aggregate amount to the [tax commissioner]. The amount so paid shall be allowed as a credit against the liability shown on the employer's quarterly withholding return required by this section. Where the aggregate amount required to be deducted and withheld by any employer is less than $[100] in a calendar quarter, the [tax commissioner] may by regulation permit an employer to file a withholding return on or before July 31 for the semi-annual period ending on June 30 and on or before January 31 of the succeeding year for the semi-annual period ending on December 31. The [tax commissioner] may, if he believes such action necessary for the protection of the revenue, require any employer to make such return and pay him the tax deducted and withheld at any time, or from time to time. Where the amount of wages paid by an employer is not sufficient under this chapter to require the withholding of tax from the wages of any of his employees, the [tax commissioner] may by regulation permit such employer to file an annual return on or before January 31 of the succeeding calendar year.

(b) *Deposit in Trust for [Tax Commissioner].* Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required by this section, the [tax commissioner] may serve a notice requiring such employer to collect the taxes which became collectible after service of such notice, to deposit such taxes in a bank approved by the [tax commissioner], in a separate account, in trust for and payable to the [tax commissioner], and to keep the amount of such tax in such account until paid over to the [tax commissioner]. Such notice shall remain in effect until a notice of cancellation is served by the [tax commissioner].

Section 23. Employer's Liability for Withheld Taxes. Every employer required to deduct and withhold tax under this act is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the [tax commissioner], and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this act shall be held to be a special fund in trust for the [tax commissioner]. No employee shall have any right of action against his employer in respect to any money deducted and withheld from his wages and paid over to the [tax commissioner] in compliance or in intended compliance with this act.

Section 24. Employer's Failure to Withhold. If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any additions to tax penalties or interest otherwise applicable in respect to such failure to deduct and withhold.

TITLE IV

ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

Section 25. Period for Computation of Taxable Income. (a) *General.* For purposes of the tax imposed by this act, a taxpayer's taxable year shall be the same as his taxable year for federal income tax purposes.

(b) *Change of Taxable Year.* If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of the tax imposed by this act shall be similarly changed. If a change in taxable year results in a taxable period of less than 12 months, the standard deduction and the duction for personal exemption allowed by this act shall be prorated under regulations prescribed by the [tax commissioner].

(c) *Termination of Taxable Year for Jeopardy.* Notwithstanding the provisions of subsections (a) and (b), if the [tax commissioner] terminates the taxpayer's taxable year under section 103 (relating to tax in jeopardy), the tax shall be computed for the period determined by such action.

Section 26. Methods of Accounting. (a) *Same as Federal.* For purposes of the tax imposed by this act, a taxpayer's method of accounting shall be the same as his method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, taxable income for purposes of this act shall be computed under such method that in the opinion of the [tax commissioner] fairly reflects income.

(b) *Change of Accounting Methods.* If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this act shall similarly be changed.

Section 27. Adjustments. In computing a taxpayer's taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the [tax commissioner], to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

Section 28. Limitation on Additional Tax. (a) *Change Other Than to Installment Method.* If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(b) *Change from Accrual to Installment Method.* If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, under regulations prescribed by the [tax commissioner].

TITLE V

ESTATES, TRUSTS, BENEFICIARIES, AND DECEDENTS

Part I - General

Section 29. Imposition of Tax. The tax imposed by this act on individuals shall apply to taxable income of estates and trusts.

Section 30. Computation and Payment. The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual except as otherwise provided by this subchapter. The tax shall be computed on such taxable income and shall be paid by the fiduciary.

Section 31. Tax Not Applicable. (a) *Associations Taxable as Corporations.* An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to tax under this act.

(b) *Exempt Associations, Trusts, and Organizations.* An association, trust, or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from the tax imposed by this act except with respect to its unrelated business taxable income.

Part II - Resident Estates and Trusts

Section 32. Resident Estate or Trust Defined. A resident estate or trust means: (1) the estate of a decedent who at his death was domiciled in this state; (2) a trust created by will of a decedent who at his death was domiciled in this state; or (3) a trust created by, or consisting of property of, a person domiciled in this state.

Section 33. Taxable Income of Resident Estate or Trust. The taxable income of a resident estate or trust means its federal taxable income modified by the addition or subtration, as the case may be, of its share of the fiduciary adjustment determined under section 34.

Section 34. Fiduciary Adjustment. (a) *Fiduciary Adjustment Defined.* The fiduciary adjustment shall be the net amount of the modifications described in section 6 (including subsection (c) if the estate or trust is a beneficiary of another estate or trust) which relates to items of income or deduction of an estate or trust.

(b) *Shares of Fiduciary Adjustment.* The respective shares of an estate or trust and its beneficiaries (including solely for the purpose of this allocation, nonresident beneficiaries) in the fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the terms of the instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the fiduciary adjustment shall be allocated to the estate or trust.

(c) *Alternate Attribution of Adjustment.* The [tax commissioner] may by regulation authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as the [tax commissioner] may require.

Section 35. Credit for Income Tax of Another State. A resident estate or trust shall be allowed the credit provided in section 11 (relating to an income tax imposed by another state) except that the limitation shall be computed by reference to the taxable income of the estate or trust.

Section 36. Credit to Beneficiary for Accumulation Distribution. (a) *General.* A resident beneficiary of a trust whose adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this act for all or a proportionate part of any tax paid by the trust under this act for any preceding taxable year which would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in section 666 of the Internal Revenue Code.

(b) *Limitation on Credit.* The credit under this section shall not reduce the tax otherwise due from the beneficiary under this act to an amount less than would have been due if the accumulation distribution or his part thereof were excluded from his adjusted gross income.

Part III - Nonresident Trusts and Estates

Section 37. Nonresident Estate or Trust Defined. A nonresident estate or trust means an estate or trust which is not a resident.

Section 38. Taxable Income of a Nonresident Estate or Trust. (a) *General Rules.* For purposes of this part:

(1) Items of income, gain, loss, and deduction mean those derived from or connected with sources in this state.

(2) Items of income, gain, loss, and deduction entering into the definition of federal distributable net income includes such items from another estate or trust of which the first estate or trust is a beneficiary.

(3) The source of items of income, gain, loss, or deduction shall be determined under regulations prescribed by the [tax commissioner] in accordance with the general rules in section 15 as if the estate or trust were a nonresident individual.

(b) *Determination of Taxable Income.* The taxable income of a nonresident estate or trust consists of (i) its share of items of income, gain, loss, and deduction which enter into the federal definition of distributable net income; (ii) increased or reduced by the amount of any items of income, gain, loss, or deduction which are recognized for federal income tax purposes but excluded from the federal definition of distributable net income of the estate or trust; (iii) less the amount of the deduction for its federal exemption.

Section 39. Share of a Nonresident Estate, Trust or Its Beneficiaries in Income From Sources in in This State. (a) *General Rule.* The share of a nonresident estate or trust of items of income, gain, loss, and deduction entering into the definition of distributable net income and the share for purpose of section 15 of a nonresident beneficiary of any estate or trust in estate or trust income, gain, loss, and deduction shall be determined as follows:

(i) To the amount of items of income, gain, loss, and deduction which enter into the definition of distributable net income there shall be added or subtracted, as the case may be, the modifications described in section 6 to the extent they relate to items of income, gain, loss, and deduction which also enter into the definition of distributable net income. No modification shall be made under this section which has the effect of duplicating an item already reflected in the definition of distributable net income.

(ii) The amount determined under the preceding paragraph shall be allocated among the estate or trust and its beneficiaries (including, solely for the purpose of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income. The amounts so allocated shall have the same character as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(iii) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the net amount determined under paragraph (a) (i) of this section shall be in proportion to his share of the estate or trust income for such year, under local law or the terms of the instrument, which is required to be distributed currently and any other amounts of such incomes, distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(b) *Alternate Methods.* The [tax commissioner] may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this state, and in the modifications related thereto, as may be appropriate and equitable.

Section 40. Credit to Beneficiary for Accumulation Distribution. A nonresident beneficiary of a trust whose adjusted gross income derived from sources in this state includes all or part of an accumulation distribution by such trust, as defined in section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this act, computed in the same manner and subject to the same limitation as provided by section 36 with respect to a resident beneficiary.

TITLE VI

PARTNERS AND PARTNERSHIPS

Section 41. Entity not Taxable. A partnership as such shall not be subject to the tax imposed by this act. Persons carrying on business as partners shall be liable for the tax imposed by this act only in their separate or individual capacities.

Section 42. Resident Partner - Adjusted Gross Income. (a) *Modification in Determining the Adjusted Gross Income of a Resident Partner.* Any modification described in section 9 which relates to an item of partnership income, gain, loss, or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss generally.

(b) *Character of Items.* Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this act as it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly for the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

(c) *Tax Avoidance or Evasion.* Where a partner's distributive share of an item of partnership income, gain, loss, or deduction is determined for federal income tax purposes by a special provision in the partnership agreement with respect to such item, and the principal purpose of such provision is the avoidance or evasion of tax under this act, the partner's distributive share of such item and any modification required with respect thereto shall be determined in accordance with his distributive share of the taxable income or loss of the partnership generally (that is, exclusive of those items requiring separate computation under the provisions of section 702 of the Internal Revenue Code.)

Section 43. Nonresident Partner - Adjusted Gross Income From Sources in This State. (a) *General.* In determining the adjusted gross income of a nonresident partner of any partnership, there shall be included only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss, and deduction entering into his federal adjusted gross income, as such part is determined under regulations prescribed by the [tax commissioner] in accordance with the general rules in section 15.

(b) *Itemized Deductions.* If a nonresident partner of any partnership elects to itemize his deductions in determining his taxable income in this state, there shall be attributed to him his distributive share of partnership items of deduction from federal adjusted gross income which are deductible by him under section 17.

(c) *Special Rules as to Sources in This State.* In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(i) characterizes payments to the partner as being for services or for the use of capital, or allocated to the partner, as income or gain from sources outside this state, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subsection (e); or

(ii) allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than his proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (e).

(d) *Partner's Modifications.* Any modification described in subsections (a) and (b) of section 6, which relates to an item of partnership income, gain, loss, or deduction, shall be made in accordance with the partner's distributive share, for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with sources in this state.

(e) *Alternate Methods.* The [tax commissioner] may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.

(f) *Application of Rules for Resident Partners to Nonresident Partners.* A nonresident partner's distributive share of items of income, gain, loss, or deduction shall be determined under subsection (a) of section 42. The character of partnership items for a nonresident partner shall be determined under subsection (b) of section 42. The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (c) of this section, having as a principal purpose the avoidance or evasion of tax under this act shall be determined under subsection (c) of section 42.

TITLE VII

RETURNS, DECLARATIONS AND PAYMENTS

Part I - Income Tax Returns

Section 44. Persons Required to Make Returns of Income. An income tax return with respect to the tax imposed by this act shall be made by the following:

(a) Every resident individual,

(1) who is required to file a federal income tax return for the taxable year, or

(2) who has adjusted gross income of more than $[600] if single or more than $[1,200] if married, or

(3) who having attained the age of 65 before the close of his taxable year has adjusted gross income of more than $[1,200] if single and more than $[1,800] if married and his spouse has not attained the age of 65 and more than $[2,400] if both have attained the age of 65 before the close of the taxable year.

(b) Every nonresident individual,

(1) who has adjusted gross income from sources in this state of more than $[600] if single and $[1,200] if married, or

(2) who having attained the age of 65 before the close of his taxable year has adjusted gross income from sources within this state of more than $[1,200] if single and more than $[1,800] if married and his spouse has not yet attained the age of 65 and more than $[2,400] if both have attained the age of 65 before the close of the taxable year.

(c) Every resident estate or trust which is required to file a federal income tax return.

(d) Every nonresident estate which has gross income of $[600] or more for the taxable year from sources within this state.

(e) Every nonresident trust which for the taxable year has from sources within this state,

(1) any taxable income,

(2) gross income of $[600] or more regardless of the amount of taxable income.

Section 45. Joint Returns by Husband and Wife. (a) *General.* A husband and wife may make a joint return with respect to the tax imposed by this act even though one of the spouses has neither gross income nor deductions except that:

(1) no joint return shall be made under this act if the spouses are not permitted to file a joint federal income tax return.

(2) if the federal income tax liability of either spouse is determined on a separate federal return their income tax liabilities under this act shall be determined on separate returns.

(3) if the federal income tax liabilities of husband and wife, other than a husband and wife described in subsection (b) of this section, are determined on a joint federal return, they shall file a joint return under this act and their tax liabilities shall be joint and several.

(4) if neither spouse is required to file a federal income tax return and either or both are required to file an income tax return under this act, they may elect to file separate or joint returns and pursuant to such election their liabilities shall be separate or joint and several.

(b) *One spouse a Nonresident.* If either husband or wife is a resident and the other is a nonresident, they shall file separate income tax returns in this state on such forms as may be required by the [tax commissioner] in which event their tax liabilities shall be separate; but they may elect to determine their joint taxable income as if both were residents and in such case, their liabilities shall be joint and several.

Section 46. Returns by Fiduciaries. (a) *Decedents.* An income tax return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with the care of his property. A final return of a decedent shall be due when it would have been due if the decedent had not died.

(b) *Individuals Under a Disability.* An income tax return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his duly authorized agent, his committee, guardian, conservator, fiduciary or other person charged with the care of his person or property other than a receiver in possession of only a part of the individual's property.

(c) *Estates and Trusts.* The income tax return of an estate or trust shall be made and filed by the fiduciary thereof.

(d) *Joint Fiduciaries.* If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(e) *Cross Reference:* For provisions relating to information returns by partnerships, see section 59.

Section 47. Notice of Qualification as Receiver. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, shall give notice of his qualification as such to the [tax commissioner], as may be required by regulation.

Section 48. Change of Status as Resident or Nonresident During Year. If an individual changes his status during his taxable year from resident to nonresident or from nonresident to resident, the [tax commissioner] may by regulation require him to file one return for the portion of the year during which he is a resident and one for the portion of the year during which he is a nonresident.

Section 49. Taxable Income as Resident and Nonresident. (a) Except as provided in subsection (b) of this section, the taxable income of the individual shall be determined as provided in section 5 for residents and section 13 for nonresidents as if the individual's taxable year for federal income tax purposes were limited to the period of his resident and nonresident status respectively.

(b) There shall be included in determining taxable income from sources within or without this state, as the case may be, income, gain, loss, or deduction accrued prior to the change of status even though not otherwise includible or allowable in respect of the period prior to such change, but the taxation or deduction of items accrued prior to the change of status shall not be affected by the change.

Section 50. Minimum Tax and Prorating of Exemptions. Where two returns are required to be filed as provided in section 48:

(1) personal exemptions and the standard deduction shall be prorated between the two returns, under regulations prescribed by the [tax commissioner], to reflect the proportions of the taxable year during which the individual was a resident and a nonresident, and

(2) the total of the taxes due thereon shall not be less than would be due if the total of the taxable incomes reported on the two returns were includible in one return.

Section 51. Time and Place for Filing Returns and Paying Tax. The income tax return required by this act shall be filed on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. A person required to make and file a return under this act shall, without assessment, notice or demand, pay any tax due thereon to the [tax commissioner] on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The [tax commissioner] shall prescribe by regulation the place for filing any return, declaration, statement or other document required pursuant to this chapter and for the payment of any tax.

Section 52. Declarations of Estimated Tax. (a) *Requirement of Declaration.* Every resident and nonresident individual shall make a declaration of his estimated tax for the taxable year, in such form as the [tax commissioner] may prescribe if his adjusted gross income (in the case of a nonresident from sources within this state), other than from wages on which tax is withheld under this act, can reasonably be expected to exceed $[500] plus the sum of the personal exemptions to which he is entitled.

(b) *Estimated Tax Defined.* The term "estimated tax" means the amount which the individual estimates to be his income tax under this act for the taxable year less the amount which he estimates to be the sum of any credits allowable for tax withheld.

(c) *Joint Declaration of Husband and Wife.* If they are eligible to do so for federal tax purposes, a husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but husband and wife elect to determine their taxes under this chapter separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) *Amendment of Declaration.* An individual may amend a declaration under regulations prescribed by the [tax commissioner].

(e) *Return or Declaration as Amendment.* If on or before January 31 (or February 15 in the case of an individual referred to in subsection (b) of section 53) of the succeeding taxable year an individual files his return for the taxable year for which the declaration is required, and pays in full the amount shown on the return as payable, such return (1) shall be considered as his declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January 15, or (2) shall be considered as the amendment permitted by subsection (d) to be filed on or before January 15 if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

(f) *Short Taxable Year.* An individual having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the [tax commissioner].

(g) *Declaration for Individual Under a Disability.* The declaration of estimated tax for an individual under a disability shall be made and filed in the manner provided in subsection (b) of section 46 for an income tax return.

Section 53. Time for Filing Declaration of Estimated Tax. (a) *Time for Filing.* A declaration of estimated tax of an individual other than a farmer shall be filed on or before April 15 of the taxable year, except that if the requirements of section 52 are first met:

(1) after April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15, or

(2) after June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15, or

(3) after September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding year.

(b) *Declaration by Farmer.* A declaration of estimated tax required by section 52 from an individual having an estimated adjusted gross income from farming in this state for the taxable year which is at least two-thirds of his total estimated adjusted gross income taxable in this state for the taxable year, may be filed at any time on or before January 15 of the succeeding taxable year, in lieu of the time otherwise prescribed.

(c) *Declaration of Estimated Tax of $[50] or Less.* A declaration of estimated tax of an individual having a total estimated tax for the taxable year of $[50] or less may be filed at any time on or before January 15 of the succeeding taxable year under regulations prescribed by the [tax commissioner].

(d) *Fiscal Year.* In the application of this section and the preceding section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section and the preceding section, the months which correspond thereto.

Section 54. Payments of Estimated Tax. (a) *General.* The estimated tax with respect to which a declaration is required under this act shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15, of the taxable year, and the third on January 15 of the succeeding taxable year.

(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(4) If the declaration is filed after September 15 of the taxable year and is not required to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed in section 53 (including cases in which an extension of time for filing the declaration has been granted), paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 53, and the remaining installments shall be paid at the time at which, and in the amounts in which they would have been payable if the declaration had been so filed.

(b) *Farmers.* If an individual referred to in subsection (b) of section 53 (relating to income from farming) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) *Amendments of Declaration.* If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after

September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) *Application to Short Taxable Years.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the [tax commissioner].

(e) *Fiscal Years.* In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(f) *Installments Paid in Advance.* At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(g) *Payment of Account.* Payment of the estimated income tax or any installment thereof, shall be considered payment on account of the income tax imposed under this act for the taxable year.

Section 55. Extension of Time for Filing and Payment. (a) *General.* The [tax commissioner] may grant a reasonable extension of time for payment of tax or estimated tax or any installment thereof, or for filing any return, declaration, statement, or other document required pursuant to this chapter, on such terms and conditions as he may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement, or document, shall exceed six months.

(b) *Security.* If any extension of time is granted for payment of any amount of tax, the [tax commissioner] may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the [tax commissioner] may require.

Section 56. Change of Election. Any election expressly authorized by this act may be changed on such terms and conditions as the [tax commissioner] may prescribe by regulation.

Section 57. Signing of Returns and Other Documents. (a) *General.* Any return, declaration, statement or other document required to be made pursuant to this act shall be signed in accordance with regulations or instructions prescribed by the [tax commissioner]. The fact that an individual's name is signed to a return, declaration, statement or other document, shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by him.

(b) *Partnerships.* Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) *Certifications.* The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this act, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

Part II - Information Returns

Section 58. General Requirements Concerning Returns, Notices, Records and Statements. The [tax commissioner] may prescribe regulations as to the keeping of records, the content and form of returns and statements and the filing of copies of federal income returns and determinations. The [tax commissioner] may require any person, by regulation or notice served on such person, to make such returns, render such statements, or keep such records, as the [tax commissioner] may deem sufficient to show whether or not such person is liable under this act for tax or for the collection of tax.

Section 59. Partnership Return. Every partnership having a resident partner or having any income derived from sources in this state, determined in accordance with the applicable rules of section 15 as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss, and deduction, and the names and addresses of the individuals whether residents or nonresidents who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual and such other pertinent information as the [tax commisioner] may prescribe by regulations and instructions. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this section, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under this act.

Section 60. Information Returns. The [tax commissioner] may prescribe regulations and instructions requiring returns of information to be made and filed on or before February 28 of each year by any person making payment or crediting in any calendar year the amounts of $[600] or more ($[10] or more in the case of interest or dividends) to any person who may be subject to the tax imposed under this act. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

Section 61. Report of Change in Federal Taxable Income. If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in Federal taxable income within ninety days after the final determination of such change, correction, or renegotiation, or as otherwise required by the [tax commissioner], and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this act, and shall give such information as the [tax commissioner] may require. The [tax commissioner] may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.

TITLE VIII

PROCEDURE AND ADMINISTRATION

Part I - Deficiencies

Section 62. Examination of Return. (a) *Deficiency or Overpayment.* As soon as practical after the return is filed, the [tax commissioner] shall examine it to determine the correct amount of tax. If the [tax commissioner] finds that the amount of tax shown on the return is less than the correct amount, he shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the [tax commissioner] finds that the tax paid is more than the correct amount, he shall credit the overpayment against any taxes due under this act by the taxpayer and refund the difference.

(b) *No Return Filed.* If the taxpayer fails to file an income tax return, the [tax commissioner] shall estimate the taxpayer's taxable income and the tax thereon on from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(c) *Notice of Deficiency.* A notice of deficiency shall set forth the reason for the proposed assessment. The notice may be mailed by certified or registered mail to the taxpayer at his last known address. In the case of a joint return, the notice of deficiency may be a single joint notice except that if the [tax commissioner] is notified by either spouse that separate residences have been established he shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his last known address unless the [tax commissioner] has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

Section 63. Assessment Final if no Protest. Ninety days after the date on which it was mailed (150 days if the taxpayer is outside the United States), a notice of proposed assessment of a deficiency shall constitute a final assessment of the amount of tax specified together with interest, additions to tax and penalties except only for such amounts as to which the taxpayer has filed a protest with the [tax commissioner].

Section 64. Protest by Taxpayer. Within 90 days (150 days if the taxpayer is outside the United States) after the mailing of a deficiency notice, the taxpayer may file with the [tax commissioner] a written protest against the proposed assessment in which he shall set forth the grounds on which the protest is based. If a protest is filed, the [tax commissioner] shall reconsider the assessment of the deficiency and, if the taxpayer has so requested, shall grant the taxpayer or his authorized representatives an oral hearing.

Section 65. Notice of Determination After Protest. Notice of the [tax commissioner's] determination shall be mailed to the taxpayer by certified or registered mail and such notice shall set forth briefly the [tax commissioner's] findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

Section 66. Action of [Tax Commissioner] Final. The action of the [tax commissioner] on the taxpayer's protest is final upon the expiration of 90 days from the date when he mails notice of his action to the taxpayer unless within this period the taxpayer seeks judicial review of the [tax commissioner's] determination.

Section 67. Burden of Proof in Proceedings Before the [Tax Commissioner]. In any proceeding before the [tax commissioner] under this act the burden of proof shall be on the taxpayer except for the following issues, as to which the burden of proof shall be on the [tax commissioner]:

(1) whether the taxpayer has been guilty of fraud with attempt to evade tax,

(2) whether the petitioner is liable as the transferee of property of a taxpayer (but not to show that the taxpayer was liable for the tax).

(3) whether the taxpayer is liable for any increase in a deficiency where such increase is asserted initially after the notice of deficiency was mailed and a protest under section 64 filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported under section 61, and of which change or correction the [tax commissioner] had no notice at the time he mailed the notice of deficiency.

Section 68. Evidence of Related Federal Determination. Evidence of a federal determination relating to issues raised in a proceeding under section 64 shall be admissible, under rules established by the [tax commissioner].

Section 69. Mathematical Error. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the [tax commissioner] shall notify the taxpayer that an amount of tax in excess of that shown on the return is due and has been asserted. Such a notice of additional tax due shall not be considered a notice of a deficiency assessment nor shall the taxpayer have any right of protest of appeal as in the case of a deficiency assessment based on such notice, and the assessment and collection of the amount of tax erroneously omitted in the return is not prohibited by any provision of this act.

Section 70. Waiver of Restriction. The taxpayer at any time, whether or not a notice of deficiency has been issued, shall have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the [tax commissioner].

Section 71. Assessment of Tax. (a) *Date of Assessment.* The amount of tax which is shown to be due on the return (including revisions for mathematical errors) shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by the [tax commissioner] shall be deemed to be assessed on the date when payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date provided in section 63 if no protest is filed; or, if a protest is filed then upon the date when the determination of the [tax commissioner] becomes final. If an amended return or report filed pursuant to section 61 concedes the accuracy of a federal change or correction, any deficiency in tax under this act resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return and such assessment shall be timely notwithstanding any other provisions of this act. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provision of this act.

(b) *Other Assessment Powers.* If the mode or time for the assessment of any tax under this act, including interest, additions to tax and penalties is not otherwise provided for, the [tax commissioner] may establish the same by regulation.

(c) *Supplemental Assessment.* The [tax commissioner] may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 62 where applicable, whenever it is found that any assessment is imperfect or incomplete in any material aspect.

(d) *Cross Reference.* For assessment in case of jeopardy, see section 103.

Section 72. Limitations on Assessment. (a) *General.* Except as otherwise provided in this act, a notice of a proposed deficiency assessment shall be mailed to the taxpayer within three years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the three year period or the period otherwise fixed.

(b) *Omission of More Than 25 Percent of Income.* If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, a notice of a proposed deficiency assessment may be mailed to the taxpayer within six years after the return was filed. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the [tax commissioner] of the nature and the amount of such item.

(c) *No Return Filed or Fraudulent Return.* If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by this act, a notice of deficiency may be mailed to the taxpayer at any time.

(d) *Failure to Report Federal Change.* If a taxpayer fails to comply with the requirement of section 61 by not reporting a change or correction increasing his federal taxable income, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return, a notice of deficiency may be mailed to the taxpayer at any time.

(e) *Report of Federal Change or Correction.* If the taxpayer shall pursuant to section 61 report a change or correction or file an amended return increasing his federal taxable income or report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed.

(f) *Extension by Agreement.* Where, before the expiration of the time prescribed in this section for the assessment of a deficiency, both the [tax commissioner] and the taxpayer shall have consented in writing to its assessment after such time, the deficiency may be assessed at any time prior to the expiration of period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

(g) *Time Return Deemed Filed.* For purposes of this section an income tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day. If a return or withholding tax for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed to be filed on April 15 of such succeeding calendar year.

Section 73. Recovery of Erroneous Refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

Section 74. Interest on Underpayments. (a) *General.* If any amount of tax imposed by this act, including tax withheld by an employer, is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 6 percent per annum shall be paid for the period from such last date to date paid. No interest shall be imposed if the amount due is less than one dollar nor shall this section apply to any failure to pay estimated income tax under section 54.

(b) *Last Date Prescribed for Payment.* For purposes of this section, the last date prescribed for the payment of tax shall be determined without regard to any extension of time.

(c) *Suspension of Waiver of Restrictions.* If the taxpayer has filed a waiver of restrictions on the assessment of a deficiency and if notice and demand by the [tax commissioner] for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(d) *Interest Treated as Tax.* Interest prescribed under this section on any tax including tax withheld by an employer shall be paid on notice and demand and shall be assessed, collected and paid in the same manner as taxes. Any reference in this act to the tax imposed by this act shall be deemed also to refer to interest imposed by this section on such tax.

(e) *Interest on Penalties, or Additions to Tax.* Interest shall be imposed under this section in respect to any penalty, or addition to tax only if such penalty or addition to tax is not paid within 10 days of the notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(f) *Payments Made Within 10 Days After Notice and Demand.* If notice and demand is made for the payment of any amount due under this act and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(g) *Satisfaction by Credits.* If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which if the credit had not been made, interest would have been allowable with respect to such overpayment.

(h) *Interest on Erroneous Refund.* Any portion of the tax imposed by this act or any interest, penalty, or addition to tax which has been erroneously refunded and which is recoverable by the [tax commissioner] shall bear interest at the rate of 6 percent per annum from the date of payment of the refund.

(i) *Limitation on Assessment and Collection.* Interest prescribed under this section may be assessed and collected at any time during the period within which the tax, penalty, or addition to tax to which such interest relates may be assessed and collected respectively.

Part II - Additions to Tax and Penalties

Section 75. Failure to File Tax Returns. (a) *Failure to File Tax Return.* In case of failure to file any return required under this act on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is not for more than one month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) *Failure to File Certain Information Returns.* In case of each failure to file a statement of payment to another person required under the authority of this act including the duplicate statement of tax withheld on wages on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to a reasonable cause and not to willful neglect, there shall be paid upon notice and demand by the [tax commissioner] and in the same manner as by the person so failing to file the statement, a penalty of $2.00 for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $2,000.

Section 76. Failure to Pay Tax. (a) *Deficiency Due to Negligence.* If any part of a deficiency is due to negligence or intentional disregard of rules and regulations (but without intent to defraud) there shall be added to the tax an amount equal to 5 percent of the deficiency.

(b) *Fraud.* If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to 50 percent of the deficiency. This amount shall be in lieu of any amount determined under subsection (a).

(c) *Failure by Individual to File Declaration or Underpayment of Estimated Tax.* If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of any tax, he shall be deemed to have made an underpayment of estimated tax. The [tax commissioner] may prescribe by regulation the method for determining the amount of the underpayment and the period of the underpayment.

(d) *Nonwillful Failure to Pay Withholding Tax.* If any employer, without intent to evade or defeat any tax imposed by this act or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of this act, such employer shall be liable for such taxes and shall pay the same together with interest thereon and the addition to tax provided in subsection (a), and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The [tax commissioner] shall have the same rights and powers for the collection of such tax, interest, and addition to tax against such employer as are now prescribed by this act for the collection of tax against an individual taxpayer.

(e) *Willful Failure to Collect and Pay Over Tax.* Any person required to collect, truthfully account for, and pay over the tax imposed by this act who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subsections (a) or (b) of this section shall be imposed for any offense to which this subsection applies.

(f) *Additional Penalty.* Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign, or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this act, shall be liable to a penalty of not more than $1,000, in addition to any other amounts required under this act, to be imposed, assessed and collected by the [tax commissioner].

(g) *Additions Treated as Tax.* The additions to tax and penalties provided by this act shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes and any reference in this act to income tax or the tax imposed by this act shall be deemed also to refer to additions to the tax, and penalties provided by this section. For purposes of the deficiency procedures provided in section 62, this subsection shall not apply to:

(1) any addition to tax under subsection (a) of section 75 except as to that portion attributable to a deficiency;

(2) any addition to tax for failure to file a declaration or underpayment of estimated tax as provided in subsection (c) of this section;

(3) any additional penalty under subsection (f) of this section.

(h) *Determination of Deficiency.* For purposes of subsections (a) and (b) related to deficiencies due to negligence or fraud, the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(i) *Person Defined.* For purposes of subsections (e) and (f) the term person includes an individual, corporation or partnership, or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

Section 77. False Information with Respect to Withholding Allowance. In addition to any other penalty provided by law, if any individual in claiming a withholding allowance states (1) as the amount of the wages shown on his return for any taxable year an amount less than such wages actually shown, or (2) as the amount of the itemized deductions referred to in section 9 shown on the return for any taxable year an amount greater than such deductions actually shown, he will pay a penalty of $50 for such statement, unless:

(1) such statement did not result in a decrease in the amounts deducted and withheld, or

(2) the taxes imposed with respect to the individual under this act for the succeeding taxable year do not exceed the sum of: (i) the credits against such taxes, and (ii) the payments of estimated tax which are considered payments on account of such taxes.

Section 62 relating to deficiency procedure shall not apply in respect to the assessment or collection of any penalty imposed by this section.

Part III - Credits and Refunds

Section 78. Authority to Make Credits or Refunds. (a) *General Rule.* The [tax commissioner] within the applicable period of limitations may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by the tax laws of this state on the person who made the overpayment, and the balance shall be refunded by the treasurer out of the proceeds of the tax retained by him for such general purposes.

(b) *Excessive Withholding.* If the amount allowable as a credit for tax withheld from the taxpayer exceeds his tax to which the credit relates, the excess shall be considered an overpayment.

(c) *Overpayment by Employer.* If there has been an overpayment of tax required to be deducted and withheld under section 19, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) *Credits st Estimated Tax.* The [tax commissioner] may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year.

(e) *Assessment and Collection After Limitation Period.* If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

Section 79. Abatements. (a) *General Rule.* The [tax commissioner] is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which (1) is excessive in amount, or (2) is assessed after the expiration of the period of limitations properly applicable thereto, or (3) is erroneously or illegally assessed.

(b) *No Claim by Taxpayer.* No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under this act.

(c) *Small Tax Balance.* The [tax commissioner] is authorized to abate the unpaid portion of assessment of any tax, or any liability in respect thereof, if he determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due.

Section 80. Limitations on Credit or Refund. (a) *General.* A claim for credit or refund of an overpayment of any tax imposed by this act shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid whichever of such periods expires the later; or if no return was filed by the taxpayer, within two years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(b) *Limit on Amount of Claim or Refund.* If the claim is filed by the taxpayer during the three-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within such three-year period, but is filed within the two-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

(c) *Extension of Time by Agreement.* If an agreement for an extension of the period for assessment of income taxes is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (a) if a claim had been filed on the date the agreement was executed.

(d) *Notice of Change or Correction of Federal Income.* If a taxpayer is required by section 61 to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the [tax commissioner], claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended retrun was required to be filed with the [tax commissioner]. If the report or amended return required by section 61 is not filed within the 90-day period therein specified, interest on any resulting refund or credit shall cease to accrue after such 90th day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(e) *Special Rules. The following rules shall apply:*

(1) If the claim for credit or refund relates to an overpayment of tax on account of the deductibility by the taxpayer of a debt as a debt which became worthless or a loss from worthlessness of a security or the effect that the deductibility of a debt or of a loss has on the application to the taxpayer of a carry-over, the claim may be made, under regulations prescribed by the [tax commissioner]

within seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(2) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back, the claim may be made, under regulations prescribed by the [tax commissioner] within the period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net operating loss which resulted in such carry-back or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later.

Section 81. Interest on Overpayment. (a) *General.* Under regulations prescribed by the [tax commissioner] interest shall be allowed and paid at the rate of 6 percent per annum upon any overpayment in respect of the tax imposed by this act. No interest shall be allowed or paid if the amount thereof is less than $1.00.

(b) *Date of Return or Payment.* For purposes of this section:

(1) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer;

(2) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year to which such amount constitutes a credit or payment.

(c) *Return and Payment of Withholding Tax.* For purposes of this section with respect to any withholding tax;

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) *Refund Within Three Months.* If any overpayment of tax imposed by this act is refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax or within three months after the return was filed, whichever is later, no interest shall be allowed under this section on overpayment.

Section 82. Refund Claim. Every claim for refund shall be filed with the [tax commissioner] in writing and shall state the specific grounds upon which it is founded. The [tax commissioner] may grant the taxpayer of his authorized representatives an opportunity for an oral hearing if the taxpayer so requests.

Section 83. Notice of Denial. If the [tax commissioner] disallows a claim for refund, he shall notify the taxpayer accordingly. The action of the [tax commissioner] denying a claim for refund is final upon the expiration of 90 days from the date when he mails notice of his action to the taxpayer unless within this period the taxpayer seeks judicial review of the [tax commissioner's] determination.

Section 84. Refund Claim Deemed Disallowed. If the [tax commissioner] fails to mail a notice of action on any refund claim within six months after the claim is filed, the taxpayer may, prior to notice of action on the refund claim, consider the claim disallowed.

Part IV – Judicial Review – Suits for Refunds

Section 85. Review of Determination of [Tax Commissioner]. A determination by the [tax commissioner] on a taxpayer's protest against the proposed assessment of a deficiency shall be subject to judicial review at the instance of any taxpayer affected thereby [either in the manner provided by law for the review of final decisions or determinations of administrative agencies of this state or by a de novo review in a court of appropriate jurisdiction].[1]

Section 86. Judicial Review Exclusive Remedy in Deficiency Proceedings. The review of a determination of the [tax commissioner] provided by section 85 shall be the exclusive remedy available to any taxpayer for the judicial review of the action of the [tax commissioner] in respect to the assessment of a proposed deficiency. No injunction or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any office of this state to prevent or enjoin the assessment or collection of any tax imposed under this act.

Section 87. Assessment Pending Review - Review Bond. The [tax commissioner] may assess a deficiency after the expiration of the period specified in section 66 notwithstanding that an application for judicial review in respect of such deficiency has been made by the taxpayer, unless the taxpayer at or before the time his application for review is made, has paid the deficiency, or has deposited with the [tax commissioner] the amount of the deficiency or has filed with the [tax commissioner] a bond, in the amount of the deficiency being contested including interest and other amounts as well as all costs and charges which may accrue against him in the prosecution of the proceeding and issued by a person authorized under the laws of this state to act as surety, conditioned upon the payment of the deficiency including interest and other amounts as finally determined and such costs and charges.

Section 88. Proceedings After Review. (a) *Credit, Refund of Abatement.* If the amount of a deficiency determined by the [tax commissioner] is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer without the making of a claim therefor, or, if payment has not been made, shall be abated.

(b) *Deficiency Disallowed - Costs.* If the deficiency determined by the [tax commissioner] is disallowed, the taxpayer shall have his costs. If the deficiency is disallowed in part, the court in its discretion may award the taxpayer a proportion of his costs.

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[1] These provisions will have to be drafted to be consistent with judicial remedies available in comparable proceedings.

(c) *Assessment Final.* An assessment of a proposed deficiency by the [tax commissioner] shall become final upon the expiration of the period specified in section 63 for filing a written protest against the proposed assessment if no such protest has been filed within the time provided; or if the protest provided in section 64 has been filed, upon the expiration of time provided for filing an application for judicial review, or upon the final judgment of the reviewing court or upon the rendering by the [tax commissioner] of a decision pursuant to the mandate of the reviewing court. Not withstanding the foregoing, for the purpose of making an application for the review of a determination of the [tax commissioner], the determination shall be deemed final on the date the notice of decision is sent by certified mail or registered mail to the taxpayer as provided in section 65.

Section 89. Suit for Refund. Except in cases involving the proposed assessment of a deficiency, any taxpayer who claims that the tax he has paid under this act is void in whole or in part, may bring an action, upon the grounds set forth in his claim for refund, against the [tax commissioner] for the recovery or the whole or any part of the amount paid. Such suit against the [tax commissioner] may be instituted in the [district, county, circuit court of appropriate jurisdiction where the taxpayer resides or in the capital city]. [If necessary, insert appropriate provision for defense of action either by the attorney general or counsel for the tax commissioner.]

Section 90. No Suit Prior to Filing Claim. No suit shall be maintained for the recovery of any tax imposed by this act alleged to have been erroneously paid until a claim for refund has been filed with the [tax commissioner] as provided in section 82 and the [tax commissioner] has denied the refund or has filed to mail a notice of action on the claim within six months after the claim was filed.

Section 91. Limitation on Suit for Refund. The action authorized in section 90 shall be filed within three years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after the denial of a claim for refund by the [tax commissioner] or within 90 days after the refund claim has been deemed to be disallowed because of the failure of the [tax commissioner] to mail a notice of action within six months after the claim was filed whichever period expires the later.

Section 92. Judgment for Taxpayer. In any action for a refund, the court may render judgment for the taxpayer for any part of the tax, interest penalties or other amounts found to be erroneously paid, together with interest on the amount of the overpayment. The amount of any judgment against the [tax commissioner] shall first be credited against any taxes, interest, penalties or other amounts due from the taxpayer under the tax laws of this state and the remainder refunded by the [state treasurer].

Part V - Miscellaneous Enforcement Provisions

Section 93. Timely Mailing. If any claim, statement, notice, petition, or other document including, to the extent authorized by the [tax commissioner] a return or declaration of estimated tax, requireo to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of this act is, after such period of such date, delivered by United States mail to the [tax commissioner], or the officer or person therein with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This section shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the [tax commissioner], office, officer or person therein with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the [tax commissioner], or the office, officer or person to which or to whom it is addressed. To the extent that the [tax commissioner] shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the [tax commissioner]. When the last day prescribed under the authority of this act, including any extension of time, for performing any act falls on Saturday, Sunday, or a legal holiday in this state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

Section 94. Collection Procedures. (a) *General.* The tax imposed by this act shall be collected by the [tax commissioner], and he may establish the mode or time for the collection of any amount due under this act if not otherwise specified. The [tax commissioner] shall, on request, give a receipt for any amount collected under this act. The [tax commissioner] may authorize incorporated banks or trust companies which are depositaries or fiscal agents of this state to receive and give a receipt for any tax imposed under this act, in such manner, at such times, and under such conditions as he may prescribe; and the [tax commissioner] shall prescribe the manner, times and conditions under which the receipt of tax by such banks and trust companies is to be treated as payment of tax to the [tax commissioner].

(b) *Notice and Demand.* The [tax commissioner] shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, additional amount, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding within 10 days of the date of the notice and demand payment thereof. Such notice shall be left at the dwelling place or usual place of business of such person or shall be sent by mail to such person's last know address. Except where the [tax commissioner] determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) *Cross-Reference:* For requirements of payment without assessment, notice or demand of amount shown to be due on return, see section 51.

Section 95. Issuance of Warrant. If any person liable to pay any tax, addition to tax, penalty, or interest imposed under this act neglects or refuses to pay the same within ten days after notice and and demand, the [tax commissioner] may issue a warrant directed to the [sheriff] of any county of this state or to his own representative commanding him to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the [tax commissioner] and to pay him the money collected by virtue thereof within 60 days after receipt of the warrant. If the [tax commissioner] finds that collection of the tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the [tax commissioner] and upon failure or refusal to pay such tax the [tax commissioner] may issue a warrant without regard to the ten-day waiting period provided in this section.

Section 96. Lien of Tax. If any tax imposed by this act is not paid when due, the [tax commissioner] may file in the office of any [county recorder] a certificate specifying the amount of the tax, addition to tax, penalty and interest due, the name and last known address of the taxpayer liable for the amount and the fact that the [tax commissioner] has complied with all the provisions of this act in the assessment of the tax. From the time of the filing, the amount set forth in the certificate constitutes a lien upon all property of the taxpayer in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. The lien provided therein has the same force, effect and priority as a judgment lien and continues for ten years from the date of recording unless sooner released or otherwise discharged.

Section 97. Extension; Release of Lien. Within ten years from the date of the recording or within ten years from the date of the last extension of the lien in the manner provided herein, the lien may be extended by recording in the office of the [county recorder] of any county, a new certificate. The [tax commissioner] may, at any time, release all or any portion of the property subject to any lien provided for in this act or subordinate the lien to other liens if he determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

Section 98. Taxpayer Not a Resident. When notice and demand for the payment of a tax is given to a nonresident and it appears to the [tax commissioner] that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, he shall send a copy of the certificate provided for in section 96 to the taxpayer at his last known address together with a notice that such certificate has been filed with the [county recorder]. Thereafter, the [tax commissioner] may authorize the institution of any action or proceeding to collect or enforce such claim in any place and by any procedure that a civil judgment of a court of record of this state could be collected or enforced. The [tax commissioner] may also in his discretion, designate agents or retain counsel outside this state for the purpose of collecting outside this state any taxes due under this act from taxpayers who are not residents of this state; and he may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof and he may require of them bonds or other security for the faithful performance of their duties. The [tax commissioner] is authorized to enter into agreements with the tax departments of other states and the District of Columbia for the collection of taxes from persons found in this state who are delinquent in the payment of income taxes imposed by those states or the District of Columbia on condition that the agreeing states and the District of Columbia afford similar assistance in the collection of taxes from persons found in those jurisdictions who are delinquent in the payment of taxes imposed under this act.

Section 99. Action for Recovery of Taxes. The [tax commissioner] within six years after the assessment of any tax may bring an action in any court of competent jurisdiction within or without this state in the name of the people of this state to recover the amount of any taxes, additions to tax, penalties and interest due and unpaid under this act. In such action, the certificate of the [tax commissioner] showing the amount of the delinquency shall be prima facie evidence of the levy of the tax, of the delinquency, and of the compliance by the [tax commissioner] with all the provisions of this act in relation to the assessment of the tax.

Section 100. Income Tax Claims of Other States. The courts of this state shall recognize and enforce liabilities for personal income taxes lawfully imposed by any other state which extends a like comity to this state, and the duly authorized officer of any such state may sue for the collection of such a tax in the courts of this state. A certificate by the secretary of state of such other state that an officer suing for the collection of such a tax is duly authorized to collect the tax shall be conclusive proof of such authority. For the purposes of this section, the word "taxes" shall include additions to tax (interest and penalties, and liability for such taxes, additions to tax), interest and penalties shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement in its courts of liability for such taxes, additions to tax, interest and penalties due this state under this act.

Section 101. Order to Compel Compliance. (a) *Failure to File Tax Return.* If any person willfully refuses to file an income tax return required by this act, the [tax commissioner] may apply to a judge of the [court of appropriate jurisdiction] for the county in which the taxpayer (or other person required to file an income tax return) resides, for an order directing such person to file the required return. If a person fails or refuses to obey such order, he shall be guilty of contempt of court.

(b) *Failure to Furnish Records or Testimony.* If any person willfully refuses to make available any books, papers, records or memoranda for examination by the [tax commissioner] or his representative or willfully refuses to attend and testify, pursuant to the powers conferred on the [tax commissioner] by section 110 (c) of this act, the [tax commissioner] may apply to a judge in the [court of appropriate jurisdiction] for the county where such person resides, for an order directing that person to comply with the [tax commissioner's] request for books, papers, records or memoranda or for his attendance and testimony. If the books, papers, records or memoranda required by the [tax commissioner] are in the custody of a corporation, the order of the court may be directed to any principal officer of such corporation. If a person fails or refuses to obey such order, he shall be guilty of contempt of court.

Section 102. Transferees. (a) *General.* The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, addition to tax, penalty or interest due the [tax commissioner] under this act, shall be assessed, paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates except as hereinafter provided in this section. The term transferee includes donee, heir, legatee, devisee, and distributee.

(b) *Period of Limitation.* In the case of the liability of an initial transferee, the period of limitation for assessment of any liability is within one year after the expiration of period of limitation against the transferor; in the case of the liability of a transferee of a transferee, within one year after the expiration of the period of limitation against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the original transferor; except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a proceeding for the collection of the liability has been begun against the initial transferor of the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the proceeding is termined.

(c) *Extension by Agreement.* If before the expiration of the time provided in this section for the assessment of the liability the [tax commissioner] and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon or an extension thereof. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee of overpayments of tax made by the transferor of which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement or extension referred to in subsection (c) of section 80. If the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee arises, then in applying the limitations under subsection (b) of section 80 on the amount of the credit or refund, the periods specified in subsection (a) of section 80 shall be increased by the period from the date of such expiration to the date of the agreement.

(d) *Transferor Deceased.* If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect had death not occurred.

Section 103. Jeopardy Assessments. (a) *Filing and Notice.* If the [tax commissioner] finds that the assessment or the collection of a tax or a deficiency for any year, current or past, will be jeopardized in whole or in part by delay, he may mail or issue notice of his finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy, including additions to tax, interest and penalties.

(b) *Termination of Taxable Year.* In the case of a tax for a current period, the [tax commissioner] shall declare the taxable period of the taxpayer immediately terminated and his notice and demand for a return and immediate payment of the tax shall relate to the period declared terminated, including therein income accrued and deductions incurred up to the date of termination if not otherwise properly includible or deductible in respect of the period.

(c) *Collection.* A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within ten days after the date of mailing or issuing the notice of jeopardy assessment, a request for reassessment, accompanied by a bond or other security in the amount of the assessment including additions to tax, penalties, and interest as to which the stay of collection is sought. If a request for reassessment, accompanied by a bond or other security on the appropriate amount, is not filed within the ten-day period, the assessment becomes final.

(d) *Proceeding on Reassessment.* If a request for reassessment accompanied by a bond or other security, is filed within the ten-day period, the [tax commissioner] shall reconsider the assessment and, if the taxpayer has so requested in his petition, the [tax commissioner] shall grant him or his authorized representatives an oral hearing. The [tax commissioner's] action on the request for reassessment becomes final upon the expiration of thirty days from the date when he mails notice of his action to the taxpayer, unless within that thirty-day period, the taxpayer files and application to seek judicial review of the [tax commissioner's] determination.

(e) *Presumptive Evidence of Jeopardy.* In any proceeding brought to enforce payment of taxes made due and payable by this section, the finding of the [tax commissioner] under subsection (a) of this section is for all purposes presumptive evidence that the assessment or collection of the tax or deficiency was in jeopardy.

(f) *Abatement if Jeopardy Does Not Exist.* The [tax commissioner] may abate the jeopardy assessment if he finds that jeopardy does not exist.

Section 104. Bankruptcy or Receivership. (a) *Immediate Assessment.* Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or any state or territory or of the District of Columbia, any deficiency (together with additions to tax and interest provided by law) determined by the [tax commissioner] may be immediately assessed.

(b) *Adjudication of Claims.* Claims for the deficiency and such additions to tax and interest may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of a protest before the [tax commissioner] under section 64. No protest against a proposed assessment shall be filed with the [tax commissioner] after the adjudication of bankruptcy or appointment of the receiver.

(c) *Cross Reference:* For the requirement of notice to the [tax commissioner] of the qualification of a trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other like judiciary, see section 47.

Part VI - Criminal Offenses

Section 105. Attempt to Evade or Defeat Tax. Any person who willfully attempts in any manner to evade or defeat any tax imposed by this act or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $[5,000], or imprisoned not more than [5] years, or both, together with the costs of prosecution.

Section 106. Failure to Collect or Pay Over. Any person required under this act to collect, truthfully account for, and pay over any tax imposed by this act who willfully fails to collect or truthfully account for an pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $[5,000], or imprisoned not more than [5] years, or both, together with the costs of prosecution.

Section 107. Failure to File Return, Supply Information, Pay Tax. Any person required under this act to pay any tax or estimated tax, or required by this act or regulation prescribed thereunder to make a return (other than a return of estimated tax), keep any records, or supply any information, who willfully fails to pay such tax or estimated tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $[5,000], or imprisoned not more than [one] year, or both, together with the costs of prosecution.

Section 108. False Statements. Any person who willfully makes and subscribes any return, statement or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or willfully aids or procures the preparation or presentation in a matter arising under the provisions of this act of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $[5,000], or imprisoned not more than [3] years, or both, together with the costs of prosecution.

Section 109. Limitations. Any prosecution under this act shall be instituted within three years after the commission of the offense, provided that if such offense is the failure to do an act required by or under the provisions of this act to be done before a certain date, a prosecution for such offense may be commenced not later than [3] years after such date. The failure to do any act required by or under the provisions of this act shall be deemed an act committed in part at the principal office of the [tax commissioner]. Any prosecution under this act may be conducted in any county where the person or corporation to whose liability the proceeding relates resides, or has a place of business or in any county in which such crime is committed. The attorney general shall have concurrent jurisdiction with the [district] attorney in the prosecution of any offenses under this act.

Part VII - Powers of [Tax Commissioner]

Section 110. (a) *General.* The [tax commissioner] shall administer and enforce the tax imposed by this act and he is authorized to make such rules and regulations and to require such facts and information to be reported, as he may deem necessary to enforce the provisions of this act. The [tax commissioner] may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(b) *Returns and Forms.* The [tax commissioner] may prescribe the form and contents of any return or other document required to be filed under the provisions of this act.

(c) *Examination of Books and Witnesses.* The [tax commissioner] for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

(d) *Secrecy of Returns and Information.* Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the [tax commissioner] or any officer or employee of the [tax department], any person engaged or retained by such [department] on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the [tax commissioner] in an action or proceeding under the provisions of the tax law to which he is a party, or on behalf of any party to any action or proceeding under the provisions of this act when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring an action to review the tax based thereon, or against whom an action or proceeding for collection of tax has been instituted. Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $[1,000] or imprisoned not more than [one] year, or both, in the discretion of the court, together with costs of prosecution. If the offender is an officer or employee of the state, he shall be dismissed from office and be ineligible to hold any public office in this state for a period of [5] years thereafter.

(e) *Reports and Returns Preserved.* Reports and returns required to be filed under this act shall be preserved for [3] years and thereafter until the [tax commissioner] orders them to be destroyed.

(f) *Cooperation with the United States and Other States.* Notwithstanding the provisions of subsection (d), the [tax commissioner] may permit the secretary of the treasury of the United States or his delegates, or the proper officer of any state imposing an income tax upon the incomes of individuals, or the authorized representative of either such officer, to inspect the income tax returns of any individuals, or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning an item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the [tax commissioner] of this state as the officer charged with the administration of the tax imposed by this act.

(g) *Cooperation With Other Tax Officials of This State.* The [tax commissioner] may permit other tax officials of this state to inspect the tax returns and reports filed under this act but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the regulations of the [tax commissioner].

Section 111. Closing Agreements. (a) *[Tax Commissioner] Authorized.* The [tax commissioner], or any person authorized in writing by him, is authorized to enter into an agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect to the tax imposed by this act for any taxable period.

(b) *Finality.* If such agreement is approved by the [state auditor] within such time as may be stated in such agreement or later agreed to, such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) the case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee or agent of this state, and

(2) in any suit, action or proceeding under such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

Section 112. Governor May Contract with Secretary of the Treasury for Collection of Tax. The governor or his delegate is authorized in his discretion to enter into an agreement with the secretary of of the treasury of the United States or his delegate, under which, to the extent provided by the terms of the agreement, the secretary or his delegate will administer, enforce and collect such income tax on behalf of the state. The cost of the services performed by the secretary or his delegate in administering, enforcing or collecting an income tax under the terms of such an agreement may be paid from the appropriations for the general operations of the [tax department].

Section 113. Governor May Contract With Secretary of Treasury for Administration of Federal Tax. The governor or his delegate is authorized in his discretion to enter into an agreement with the secretary of the treasury of the United States or his delegate under which, to the extent provided by the terms of the agreement, the governor or his delegate will undertake to conduct on behalf of the United States any administrative, enforcement or collection function in respect to the federal income tax on individuals. Such agreement shall make provision for the payment by the United States of cost of the services performed on its behalf.

Section 114. Armed Forces Relief Provisions. (a) *Time of Performance.* The period of service in the armed forces of the United States in combat zones plus any period of continuous hospitalization outside this state attributable to such service plus the next 180 days shall be disregarded in determining, under regulations to be promulgated by the [tax commissioner], whether any act required by this act was performed by a taxpayer or his representative within the time prescribed therefor.

(b) *Death Attributable to Service in Combat Zone.* In the case of any individual who dies during an induction period while in active service as a member of the armed forces of the United States, if such death occurred while the individual was serving in a combat zone or as a result of wounds, disease, or injury incurred while so serving, the tax imposed by this act shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone.

Section 115. Effective Date. This act shall take effect immediately and shall be applicable with respect to items of income, deduction, loss or gain accruing in taxable years ending on or after [January 1, 19   ] but only to the extent such items have been earned, received, incurred or accrued on or after [January 1, 19   ]. For the purpose of facilitating the administration of the tax imposed by this act during the transitional period, the [tax commissioner] shall provide by regulation for the filing of returns in respect to taxable periods of less than 12 calendar months ending after [January 1, 19   ] and prior to [December 31, 19   ].

Section 116. Separability. [Insert separability clause.]

Section 117. Disposition of Revenues. [Insert appropriate language for disposition of revenues.]

TITLE IX

AUTHORIZATION FOR A COUNTY SUPPLEMENT TO THE STATE INCOME TAX

Section 118. Title. This part may be cited as the "Uniform County Income Tax Law."

Section 119. Authorization. Any county, by action of its local governing board, may adopt by reference the provisions of the state income tax imposed by titles I through VIII, except that a county located in a Standard Metropolitan Statistical Area, designated as such by the U. S. Bureau of the Census in most recent census of population, may adopt an income tax only if the governing board of each county in that Standard Metropolitan Statistical Area within this state by mutual and unanimous agreement adopts the identical tax authorized by this act.

Section 120. Certification and Withdrawal of the County Income Tax. Any county enacting an income tax in accordance with this act shall certify to the [tax commissioner] the date of adoption of the ordinance imposing an income tax, the rate of the tax, and the date when the enactment becomes effective.

A county imposing an income tax in accordance with the provisions of this act may repeal its income tax only after first giving at least [120] days notice of the contemplated repeal of its income tax to the [state tax department] and, in the case of counties within a Standard Metropolitan Statistical Area, to the governing boards of other participating counties. The withdrawal shall be effective from and after the first day of the next calendar year and in the absence of a mutual and unanimous agreement among all counties in the Standard Metropolitan Statistical Area the income tax imposed by each county shall be discontinued and repealed in all counties. Nothing in this section shall be construed or applied to prevent or interfere with the collection of tax monies which were lawfully due and payable when the tax was effective and any money collected after the tax has been repealed and discontinued shall be accounted for and distributed as required in this act.

Section 121. Rate of County Income Tax. In lieu of the rates applicable to taxable incomes set forth in section 1 of this act the income tax imposed by any county adopting by reference the state income tax shall not exceed [20] percent of the liability determined for state income tax purposes.[1]

Section 122. State Administration of the County Income Tax. The income tax imposed under the provisions of this act in any county shall be administered by the [state tax commissioner]. Revenues collected under county income taxes shall be accounted for separately and shall be paid into a separate fund to be distributed to the counties imposing such taxes after deducting an amount to cover the necessary and legitimate additional expenditures incurred by the [tax commissioner] in administering the county income taxes. The rules and regulations promulgated in accordance with the state income tax shall apply to the county income taxes except when, in the judgment of the [tax commissioner], such rules would be inconsistent or not feasible or proper administration.

Section 123. Distribution of Collections Among Local Governments. All sums received and collected on behalf of a particular political subdivision purusant to this act shall be credited to a special Local Income Tax Fund which is hereby established in the State Treasury, and after deducting the amount of refunds made, the amounts necessary to defray the cost of collecting tax, and the administrative expenses incident thereto, shall be paid within [10] days after collection to the political subdivision entitled thereto.

Section 124. Separability. [Insert separability clause.]

Section 125. Effective Date. [Insert effective date.]

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[1] In order to prevent counties from experiencing revenue windfalls or losses as a result of changes in state income tax rates, legislatures may wish to consider authorizing the [tax commissioner] to proportionately increase or reduce the county income tax limitation.

15-62-30

STATE BROAD-BASED SALES TAX

The retail sales tax ranks behind the property tax as the most widely used of the major tax sources in the State-local tax system. Less than 2 percent of the Nation's population resides in the handful of states that do not levy a sales tax. But, interstate variations in sales tax rates and coverage still loom large, indicating considerable untapped sales tax potential. Both a higher rate and a more inclusive tax base will increase the yield of the sales tax.

The rationale for the retail sales tax rests on the belief that consumption is an appropriate basis on which to distribute a substantial part of the state tax load. Most state sales taxes, however, fall far short of carrying this philosophy into practice. While the vast bulk of sales of tangible personal property are taxed, many states tax a limited number of services. Utility services and the rental of rooms to transients represent the services most frequently taxed. Only a few state sales taxes include other consumer services such as laundering and dry cleaning and automotive repairing despite evidence that expenditures of this kind bulk larger each year in aggregate consumer spending.

In general, this legislation attempts to achieve the closest possible relationship between the tax base and consumer spending – consistent with administrative feasibility. A broader base will require a lower nominal rate to obtain a desired yield. It will provide maximum responsiveness of sales tax receipts to economic growth. It will also simplify administration by avoiding the necessity for vendors and the state to distinguish between taxable and nontaxable goods and services.

The percentage of income expended on services tends to rise as incomes rise; taxation of services therefore tends to make the sales tax less regressive. The inclusion of services in the base also makes the tax yield more responsive to growth in economic activity. In addition, the sale of taxable commodities often involves services which are difficult to account for separately. Sales tax compliance and administration are therefore far simpler where the entire price is taxable than where the service and commodity elements must be segregated. The draft legislation which follows extends the sales tax base to many services rendered to individuals by firms that would frequently be sales tax collectors in any case. State sales tax statutes that include a wider variety of services thus contribute to equity, revenue productivity, and administrative ease.

The tax base encompassed in this legislation differs from many state sales tax statutes in another important respect – sales of items subject to specific excises, e.g., cigarettes, motor fuel, and alcoholic beverages, are taxed. This treatment accords more closely to the underlying rationale for the sales tax as a general levy applicable broadly to all items of consumer spending which may be supplemented by special excise taxes. States that now subject certain items to special taxation and exempt them from the general sales tax should reverse the pattern on grounds of both sales tax logic and administrative ease.

From the very beginning of the sales tax movement, this levy encountered criticism because, in concept at least, it applied to such necessities as food, clothing, shoes, and drugs. This indictment proved strong enough in many states to secure exemptions for food, drug, and other commodities as the political price for enactment. Fourteen of the forty-four sales tax states now exempt purchases of food for home consumption, and the District of Columbia taxes food at a preferential low one percent rate whereas other sales are taxed at three percent. Twenty-one states provide complete or partial sales tax exemption for purchases of prescription drugs.

Studies have shown that a food exemption may cut sales tax collections by as much as 25 percent. Part of this loss stems from a "leakage" problem now that supermarkets sell toasters as well as loaves of bread. While the exemption mitigates the regressive impact of the sales tax, several states achieve a similar result without sacrificing as much revenue. The technique, a tax credit against the state's personal income tax, almost squares the revenue circle – that of maximizing consumer tax yields while minimizing the burden which these levies impose on low income families. Because of the merit of the tax credit-tax rebate alternative to commodity exemptions (e.g., food and drugs), this legislation assumes the states will increasingly use this approach.[1]

Exemptions and exclusions from tax in this legislation are thus less numerous than in most state sales tax statutes. Sales for resale and sales for commodities that are intended to become ingredients or component parts of other commodities must, of course, be exempted to avoid sales tax pyramiding. When the tax applies to producers goods, the result may be multiple burden on the final product. It is argued that this can both retard economic growth and force certain entreprenuers to absorb a tax not intended to rest on them. Because it is not easy to distinguish between goods intended for producer or consumer use – fuel and electricity, rugs and furnishings, typewriters and many other office supply and equipment items – the exclusion of producers' goods must be confined to clearly identifiable products. The guidelines provided in this legislation exclude from taxable sales (a) the sale of tangible personal property that is consumed, destroyed, or loses its identity in the manufacture of other property for later sale, and (b) the sale of specific machinery and processing equipment designed exclusively and made for and specifically used in the manufacture of a product or the rendering of a taxable service.

The form of the following legislation is a tax on the vendor for the privilege of selling at retail. This approach has several advantages over the other forms (a tax on the sale, the receipts from sales, or on the consumer, with the vendor being made responsible for collection and payment of the tax to the state). While clearly defining the liability, it facilitates the taxation of national banks, certain types of contracts and vending machine operators. It also avoids the necessity of exempting small sales and the useless and time consuming requirement of accounting for every penny collected under a tax imposed on the consumer. The statute expresses a legislative intent that the burden be passed on to the consumer as an item separate from the price of the product, and by appropriate provision seeks to achieve this result in a manner that has been found generally acceptable to retailers.

Several of the recent state sales tax enactments provide for a small percentage-of-tax allowance to vendors for collecting the tax from consumers. While this increases retailer acceptance of the tax, it is criticized on the grounds that a flat percentage allowance fails to account for differences in retailer compliance costs. A number of states allow retailers the right to retain "breakage," that is, the amount collected under the bracket system in excess of the amount due the state, as a means of helping them meet their compliance burden. Proponents of this method contend that under it, retailers in the same line are similarly benefitted and therefore no competitive disturbance results. They argue that breakage is usually greatest in those businesses with large numbers of small sales where highest compliance costs occur. Percentage allowances, in contrast, constitute arbitrary payments that may or may not bear a reasonable relationship to actual ratios of compliance cost to taxes paid. The "breakage" method of compensating retailers has been provided in this legislation.

The Virginia sales tax law enacted in 1966 has been used as the framework for this suggested legislation.

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[1] *State Legislative Program of the Advisory Commission on Intergovernmental Relations,* (Washington, D.C.). State personal income tax legislation developed by the Advisory Commission on Intergovernmental Relations provides for a food tax credit and authorizes per capita tax rebates to low income families who would not benefit from an income tax credit.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

TITLE I

RETAIL SALES AND USE TAX

Section 1. Citation. – This act shall be known and may be cited as the "Retail Sales and Use Tax Act."

Section 2. Definitions. The following words, terms, and phrases shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(1) "Person" means any individual, firm, co-partnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural as well as the singular number.

(2) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication; and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(3) "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this act, and includes any such transaction as the commissioner upon investigation finds to be in lieu of a sale; but sales for resale must be made in strict compliance with rules and regulations made under this act. Any person making a sale for resale which is not in strict compliance with such rules and regulations shall himself be liable for and pay the tax. "Retail sale" and a "sale at retail" include:

(i) the sale or charges for any room or rooms, lodging, or accommodations furnished to transients by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration. A transient is a person who occupies rooms, lodgings, or accommodations for less than a period of [ninety] continuous days.

(ii) sales of tangible personal property to persons for resale if, because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because the persons are minors or transients, or because the persons are engaged in essentially service businesses, or for any other reason, there is likelihood that the state will lose tax funds due to the difficulty of policing the business operations. The commissioner may promulgate rules and regulations requiring vendors of or sellers to such persons to collect the tax imposed by this act on the cost price of the tangible personal property to such persons and may refuse to issue certificates of registration to such persons.[1]

(iii) the sale or charge of admissions.

(iv) the charge or consideration for the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, dry cleaning, or cleaning tangible personal property, or applying or installing tangible personal property as a repair or replacement part of other personal property for a consideration, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction with the service, except such services as are rendered in the construction, remodeling, repair, or maintenance of real estate and such services as are rendered directly in conjunction with the processing, manufacturing, refining, or conversion of products for sale or resale.

(v) the charge for the service of printing or imprinting, photographing, or copying by any means whatsoever for a consideration for persons who furnish either directly or indirectly the materials used in conjunction with the rendition of the service.

(vi) the charge for barber and beauty services to persons and animals for a consideration whether or not any tangible personal property is transferred in conjunction with the performance of the service.

(vii) the charge for motor vehicle parking service or parking space in privately owned parking lots or garages and the charge for docking or storage space for boats in privately owned boat docks or marinas.

(viii) all charges for work relating to motor vehicles and boats of another whether or not any tangible personal property is transferred in conjunction with services performed.

(ix) the furnishing of intrastate telephonic and telegraphic communications and services.

(4) "Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this act, without any deduction whatsoever of any kind or character, except as provided in this act. "Gross sales" do not include the Federal retailers' excise tax if this excise tax is billed to the purchaser separately from the selling price of the article, or the retail sales or use tax, or any sales tax imposed by any county or city.

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[1] Louisiana requires wholesalers to collect and prepay a portion of the sales tax liability of certain vendors who then merely remit the difference between the total liability and the amount they prepaid through wholesalers.

(5) "Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever; but cash discounts allowed and taken on sales are not included in the sales price; nor shall the sales price include finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price or transportation charges separately stated. If used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this act shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

(6) "Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price in subparagraph (5) of this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

(7) "Lease or rental" means the leasing or renting of tangible personal property and the possession of use thereof by the lessee or rentee for a consideration, without transfer of the title to the property.

(8) "Distribution" includes the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted the property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this act.

(9) "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price in subsection (b) of this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

(10) "Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in this State, or for any purpose other than the sale at retail in the regular course of business.

(11) "Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business.

(12) "Business" means any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect.

(13) "Retailer" means every person engaged in the business of making sales of tangible personal property and taxable services as defined in this act.

(14) "Commissioner" means the [State Tax Commissioner].

(15) "Tangible personal property" means personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" does not include stocks, bonds, notes, insurance or other obligations or securities.

(16) "Use tax" means the tax imposed upon the use, consumption, distribution, and storage of tangible personal property as herein defined.

(17) "In this state" or "in the state" means within the exterior limits of the state of [ ] and includes all territory within these limits owned by or ceded to the United States of America.

(18) The words "import" and "imported" apply to tangible personal property imported into this state from other states as well as from foreign countries, and the words "export" and "exported" apply to tangible personal property exported from this state to other states as well as to foreign countries.

Section 3. Imposition of Sales Tax. – There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this state, or who rents or furnishes any of the things or services taxable under this act, or who stores for use or consumption in this state any item or article of tangible personal property as defined in this act, or who leases or rents such property within this state, the same to be collected in the amount to be determined by applying the rate of [ ] percent to:

(1) the sales price of each item or article of tangible personal property when sold at retail or distributed in this state, the tax to be computed on gross sales.

(2) the gross proceeds derived from the lease or rental of tangible personal property, as defined in this act, where the lease or rental of such property is an established business, or part of an established business, or is incidental or germane to the business.

(3) the cost price of each item or article of tangible personal property stored in this state for use or consumption in this state.

(4) the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in sub-paragraph (3)(i), section 2 of this act.

(5) the gross sales of all services taxable under this act. No services are taxable under this act except those expressly enumerated and made taxable.

Section 4. Imposition of Use Tax. – There is levied and imposed, in addition to all other taxes and fees of every kind except the tax imposed under section 3 of this act, a tax upon the use or consumption of tangible personal property in this state, to be collected in the amount determined by applying the rate of [ ] percent to the cost price of each item or article of tangible personal property used or consumed in this state: Provided, that tangible personal property which has been acquired after the effective date of this act for use outside this state and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this state for use within six months of its acquisition; but if so brought within this state six months or more after its acquisition, the property shall be taxed on the basis of the current market value (but not in excess of its cost price) of the property at the time of its first use within this state: Provided, further, that the tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this state bears to the total useful life of the property (but it shall be presumed in all cases that the property will remain within this state for the remainder of its useful life unless convincing evidence is provided to the contrary).

Section 5. Exclusions and Exemptions.[1] "Retail sale" or "sale at retail," do not include the sale of:

(1) tangible personal property which becomes an ingredient or component part or, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale but does include fuel and electricity;

(2) specific machinery and processing equipment and repair parts or replacements thereof, exclusively designed and made for and specifically used in the manufacture of a product or the rendering of a taxable service;

(3) materials, containers, labels, sacks, cans, boxes, drums or bags and other packing, packaging, or shipping materials for use in packing, packaging or shipping tangible personal property;

(4) tangible personal property delivered pursuant to bona fide written contracts entered into before the date of the enactment of this act, provided delivery is made within ninety days after the effective date of this act; and building supplies, fixtures or equipment that enter into or become a part of a building or other kind of structure in this state, where plans, specifications, and the construction contract for a specific project has been entered into prior to the date of the enactment of this act, provided delivery is made within the time specified in such contract for the completion of such specific project;

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[1] This legislation takes the approach that exclusions and exemptions should be held to the minimum consistent with the need to avoid tax pyramiding. As the introductory statement notes, there is ample justification for reducing the regressivity of the sales tax either by providing exemptions for food and drugs or by adopting the income tax credit-tax rebate approach. There is no similar compelling justification for exempting sales to State and local governments or to nonprofit educational, religious and charitable organizations. Accordingly, this section makes no provision for any of the foregoing exemptions.

(5) commercial feeds, seed, plants, fertilizers, liming materials, breeding and other livestock, semen, breeding fees, baby chicks, turkey poults, agricultural chemicals, fuel for drying or curing crops, containers for fruits and vegetables, or farm machinery, and all other agricultural supplies provided they are sold to and purchased by farmers for use in agricultural production for market;

(6) tangible personal property sold or leased to a public utility for use or consumption by the utility directly in the rendition of its public service;

(7) school lunches sold and served to pupils and employees of schools and subsidized by government, and school textbooks sold by a local school board or authorized agency thereof; and school textbooks sold by a college or other institution of learning, not conducted for profit, for use of students attending the institution of learning;

(8) tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, sometimes referred to as "casual sales"

(9) tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to the business, including a simultaneous purchase and taxable leaseback.

(10) Tangible personal property and taxable services for use or consumption by the United States; but this exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States.

(11) Delivery of tangible personal property outside this state for use or consumption outside this state.

Section 6. Credit for Taxes Paid in Another State. – A credit shall be granted against the taxes imposed by this act with respect to a person's use in this state of tangible personal property purchased by him in another state. The amount of the credit shall be equal to the tax paid by him to another state or political subdivision thereof by reason of the imposition of a similar tax on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this act.

Section 7. Applicability or Inapplicability of Use Tax in Certain Cases. – The use tax does not apply to tangible personal property owned or acquired in this state or imported into this state, or held or stored in this state, prior to the effective date of this act. The use tax does apply to all tangible personal property imported or caused to be imported into this state on or after the effective date of this act except as provided in this act, unless the property has previously been subject to a sales or use tax in another state or political subdivision equal to or greater than the tax imposed by this act for which credit is given under section 9, or unless proof is furnished that the tangible personal property imported or caused to be imported into this state was owned or acquired prior to the effective date of this act, or otherwise is exempt under this act, but the use tax does not apply to the use of any article or tangible personal property brought into the state by a non-resident individual for his personal use while visiting within the state.

Section 8. Moving Residence or Business into State; Use Tax. – The use tax does not apply to tangible personal property purchased outside this state for use outside this state by a then non-resident natural person or a business entity not actually doing business within this state who or which later brings the tangible personal property into this state in connection with his establishment of a permanent residence or business in this state, provided that the property was purchased more than six months prior to the date it was first brought into this state or prior to the establishment of the residence or business, whichever first occurs. This section does not apply to tangible personal property temporarily brought into this state for the performance of contracts for the construction, reconstruction, installation, repair, or for any other service with respect to real estate or fixtures thereon.

Section 9. Diversion of Tangible Personal Property to Personal Use – The use tax applies to tangible personal property and taxable services of persons holding themselves out as sellers of goods and services when tangible personal property or taxable services are diverted to the personal use of the person, his family, or his employees.

Section 10. Dealers. The tax levied in section 3 and section 4 shall be collected from "dealers." For the purpose of this act, "dealer" means:

(1) any person physically located in this state who:

(i) manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this state;

(ii) imports or causes to be imported into this state tangible personal property from any state or foreign country, for sale at retail for use, consumption, or distribution, or for storage to be used or consumed in this state;

(iii) sells at retail, or offers for sale at retail, or has in possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this state, tangible personal property and taxable services as defined in this act;

(iv) has sold at retail, or used, consumed, or distributed, or stored for use or consumption in this state, tangible personal property or who has performed taxable services, and who cannot prove that the tax levied by this act has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property or the charge for the rendition of taxable services;

(v) leases or rents tangible personal property, as defined in this act, for a consideration, permitting the use or possession of the property without transferring title thereto; and

(2) every other person who:

(i) maintains or has within this state, directly, or by an agent or a subsidiary, an office, distributing house, sales room, or house, warehouse, or other place of business;

(ii) solicits business in this state either by employees, independent contractors, agents or other representatives, and by reason thereof makes sales to persons within this state of tangible personal property, the use of which is taxed by this act; and any other person making sales to persons within this state of tangible personal property, the use of which is taxed by this act, who may be authorized by the commissioner to collect such tax;

(iii) as a representative, agent, or solicitor, for an out-of-state principal, solicits, receives and accepts orders from persons in this state for future delivery and whose principal refuses to register under this act;

(iv) shall become liable to and shall owe this state any amount of tax imposed by this act, whether or not he holds, or is required to hold, a certificate of registration under this act.

Section 11. Contractors. – (a) Any person who contracts orally in writing, or by purchase order, to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon and in connection therewith to furnish tangible personal property or taxable services, shall be deemed to have purchased the tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for the person shall collect the tax to the extent required by this act.

(b) Any person who contracts to perform services in this state and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and if a sale or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective of whether or not any right, title or interest in the tangible personal property becomes vested in the contractor; but this subsection does not apply to the sale of tangible personal property which becomes an ingredient or component part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale or governmental exclusion set out in section 5 of this act.

(c) Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipment rental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

(d) Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section.

(e) Nothing in this section shall be construed to affect or limit the resale exclusion provided for in this act, nor shall anything contained herein be construed to impose any sales or use tax with respect to the use in the performance of contracts with the United States or this State and its political subdivisions, of tangible personal property owned by a governmental body which actually is not used or consumed in the performance thereof.

Section 12. Certificates of Registration. **– (a) Every person desiring to engage in or conduct business as a dealer in this State shall file with the Commissioner an application for a certificate of registration for each place of business in this state.**

(b) Every application for a certificate of registration shall be made upon a form prescribed by the Commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the Commissioner requires. The application shall be signed by the owner if a natural person; in the case of an assocation or partnership, by a member of partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(c) When the required application has been made the Commissioner shall issue to each applicant a separate certificate of registration for each place of business within this State. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

(d) Whenever any person fails to comply with any provision of this act or any rule or regulation of the Commissioner relating thereto, the Commissioner, upon hearing after giving such person ten days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by certified mail directed to the last known address of the person. A dealer whose certificate of registration has been previously suspended or revoked shall pay the Commissioner a fee of [ ] dollars for the renewal or re-issuance of a certificate of registration.

(e) Any person who engages in busines as a dealer in this State without obtaining a certificate of registration or after a certificate of registration has been suspended or revoked, and each officer of any corporation which so engages in business is guilty of a misdemeanor; each day's continuance in business in violation of this section is a separate offense.

(f) If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate expires; and the holder shall inform the Commissioner in writing within thirty days after he has ceased to conduct the business at that place; but, if the holder of a

certificate of registration desires to change his place of business to another place in this State, he shall so inform the Commissioner in writing, and his certificate shall be revised accordingly.

(g) This section also applies to any person who engages in the business of furnishing any of the things or services taxable under this act. Also, it applies to any person who is liable only for the collection of the use tax, but that person may be issued a certificate of registration in relevant form.

Section 13. Exemption Certificates. – (a) All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the person who makes the sale, distribution, lease, or storage, unless he takes from the purchaser or lessee a certificate to the effect that the property is exempt under this act.

(b) The certificate mentioned in this section relieves the person who takes the certificate from any liability for the payment or collection of the tax, except upon notice from the commissioner that the certificate is no longer acceptable. The certificate shall be signed by and bear the name and address of the purchaser or lessee, indicate the number of the certificate of registration (if any) issued to the purchaser, or lessee, indicate the general character of the taxable service rendered or tangible personal property sold, distributed, leased, or stored (or to be sold, distributed, leased, or stored under a blanket exemption certificate) and be substantially in such form as the commissioner prescribes.

(c) If a purchaser or lessee who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding property for resale, distribution, or lease in the regular course of business, the use shall be deemed a taxable sale by the purchaser or lessee as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale distribution, or lease, the purchaser shall pay the tax on the cost of the property to him and when the property is sold shall collect and pay the tax on the difference between the cost of the property to him and the retail sales price.

(d) If a purchaser gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distribution from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

Section 14. Collection. – The tax levied by this act shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add the tax to the sales price or charge; and thereafter, the tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts, but no action at law or suit in equity under this act may be maintained in this state by any dealer who is not registered under this act, or is delinquent in the payment of the taxes imposed under this act.

To eliminate separate statement of the amount of tax in fractions of one cent, dealers shall add to the sales price or charge and collect from the purchaser, consumer, or lessee such amounts as may be prescribed by the commissioner to carry out the purposes of this section.

Notwithstanding any exemption from taxes which any dealer enjoys under the Constitution or laws of this or any other state, or of the United States, the dealer shall collect the tax from the purchaser, consumer, or lessee and shall pay it over to the Commissioner as herein provided.

Any dealer who neglects, fails, or refuses to collect the tax upon each and every taxable sale, distribution, lease or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and the dealer shall not thereafter be entitled to sue for or recover in this state any part of the purchase price or rental from the purchaser until the tax is paid. Also, any dealer who neglects, fails or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, is guilty of a misdemeanor.

Section 15. Absorption of Tax Prohibited. – No person shall advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of the tax, except as authorized under section 31. Any person who vilates this section is guilty of a misdemeanor.

Section 16. Returns by Dealers. – Every dealer required to collect or pay the sales or use tax, on or before the [twenty-eighth] day of the month following the month in which the tax shall become effective, shall transmit to the Commissioner, upon a form prescribed, prepared and furnished by him, a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this act during the preceding calendar month; and thereafter a like return shall be prepared and transmitted to the Commissioner by every dealer on or before the [twenty-eighth] day of each month, for the preceding calendar month. The return also shall contain a statement showing the amount in each class of exclusions and exemptions which are not subject to the tax imposed by this act, or if the form so provides, the total amount thereof without specifying each class. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies fifty-two to fifty-three weeks, the Commissioner may make rules and regulations for reporting consistent with the accounting period. When the tax for which any dealer is liable under this act does not exceed [ ] dollars in any month, or [ ] dollars in any annual reporting period, the Commissioner may permit a dealer upon written application to file an annual return and pay the amount of tax due on the last day of the month following the end of the annual period. When the tax for which any dealer is liable under this act does not exceed [ ] dollars in any month, or [ ] dollars in any annual reporting period, the Commissioner may permit a dealer upon written application to file a quarterly return and pay the amount of tax due on the last day of the month following end of the quarterly period.

Section 17. Payment to Accompany Dealer's Return. – At the time of transmitting to the Commissioner the return required under section 16, the dealer shall remit to the Commissioner therewith the amount of tax due under the applicable provisions of this act after making appropriate adjustments for purchases returned, repossessions, and accounts uncollectible and charged off as provided in sections 18, 19, and 20. The tax imposed by this act for each month becomes delinquent on the day following the [twenty-eighth] day of the succeeding month if not theretofore paid.

Section 18. Returned Goods. – If purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this act has been collected or charged to the account of the purchaser, the dealer is entitled to reimbursement of the amount of tax collected or charged by him, in the manner prescribed by the commissioner, but the amount of tax so reimbursed to the dealer shall not include the tax paid upon any cash retained by the dealer after the return of merchandise; and if the tax has not been remitted by the dealer, the dealer may deduct it in submitting his return. The dealer shall be issued a refund by the commissioner equal to the net amount remitted by the dealer for the tax collected if the dealer can establish that the tax was not due.

Section 19. Repossessions. – A dealer who has paid the tax on tangible personal property sold under a retained title, conditional sale, or similar contract, may take credit for the tax paid by him upon the unpaid balance due him when he repossesses the property, the credit to be administered by the commissioner in the same manner as provided for returned purchases under section 18. When repossessed property is resold, the sale is subject in all respects to this act.

Section 20. Bad Debts. In any return filed under the provisions of this act, the dealer, under rules and regulations prescribed by the commissioner, may credit against the tax shown to be due on the return the amount of sales or use tax previously returned and paid on accounts which during the period covered by the current return have been found to be worthless and actually charged off for income tax purposes; except that if any accounts so charged off are thereafter in whole or in part paid to the dealer, the amount paid shall be included in the first return filed after the collection and the tax paid accordingly.

Section 21. Extensions. – The commissioner may grant an extension upon written application therefor to the end of the calendar month in which any tax return is due hereunder or for a period not exceeding thirty days, and no interest or penalty shall be charged, assessed or collected by reason of the granting of the extension, except that when an extension is granted beyond the end of the calendar month in which any tax return is due, interest on the tax at the rate of one-half of one percent per month, or fraction thereof, shall be charged.

Section 22. Civil Penalties. – When any dealer fails to make any return and pay the full amount of the tax required by this act, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of [$10] and ten percent of the tax due if the failure is for not more than thirty days, with an additional five percent for each additional thirty days, or fraction thereof, during which the failure continues, not to exceed twenty-five percent in the aggregate; but, if the failure is due to providential cause shown to the satisfaction of the Commissioner, the return with remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return, where willful intent exists to defraud the state of any tax due under this act, a specific penalty of fifty percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this act shall be payable by the dealer and collectible by the commissioner as if they were a part of the tax imposed.

Section 23. Assessment Based on Estimate. – (a) If any dealer fails to make a return as provided by this act, or makes a grossly incorrect return, or a return that is false or fraudulent, the commissioner shall make an estimate for the taxable period of the retail sales or distributions of the dealer, or of the gross proceeds from leases of tangible personal property, or taxable services by the dealer, or the cost price of all articles of tangible personal property imported by the dealer for use or consumption in the state or storage by the dealer of tangible personal property to be used or consumed in the state, and assess the tax, plus penalties. The commissioner shall give the dealer ten days' notice in writing requiring the dealer to appear before him or an assistant with such books, records, and papers as he requires relating to the business of the dealer for the taxable period; and the commissioner may require the dealer or the agents and employees of the dealer to give testimony or to answer interrogatories under oath administered by the commissioner or his assistants respecting the sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services or the failure to make a return thereof as provided in this act. If any dealer fails to make any return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of an investigation relating to the sale, distribution, lease, use consumption, or storage of tangible personal property, or taxable services, the commissioner may make the assessment based upon information available to him and issue a warrant for the collection of the taxes and penalties found to be due. The assessment shall be deemed prima facie correct.

(b) If the dealer has imported the tangible personal property and fails to produce an invoice showing the sales price of the articles, or the invoice does not reflect the true or actual sales price as defined in this act, the Commissioner shall ascertain, in any manner feasible, the true sales price and assess and collect the tax, with penalties, to the extent they have accrued, on the true sales price as ascertained by him. The assessment shall be deemed prima facie correct.

(c) In the case of the lease of tangible personal property, if the consideration given or reported by the dealer, in the judgment of the commissioner, does not represent the true or actual consideration, the commissioner may fix it and assess and collect the tax thereon as above provided, with penalties as have accrued. The assessment shall be deemed prima facie correct.

Section 24. Records. – (a) Every dealer required to make a return and pay or collect any tax under this act shall keep and preserve suitable records of the sales, leases, or purchases, as the case may be, taxable under this act, and other books of account as necessary to determine the amount of tax due hereunder, and other pertinent information as required by the commissioner; and every dealer shall keep and preserve for a period of four years all invoices and other records of goods, wares, and merchandise, or other subjects of taxation under this act, and all the books, invoices, and other records shall be open to examination at all reasonable hours by the commissioner or any of his duly authorized agents.

(b) In order to aid in the administration and enforcement of the provisions of this act, all wholesalers and jobbers in this state shall keep a record of all sales of tangible personal property, whether the sales be for cash or on terms of credit. The records required to be kept by all wholesalers and jobbers shall include the name and address of the purchaser, the number of the certificate of registration issued to the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. These records shall be kept for a period of four years and shall be open to the inspection of the commissioner or his authorized agents at all reasonable hours during the day. The failure of any wholesaler or jobber in this state to keep the records, or the failure of any wholesaler or jobber in this state to permit an inspection of the records by the commissioner as aforesaid, is a misdemeanor. Moreover, if any person who is both a retailer and a wholesaler or jobber fails to keep proper records showing wholesale sales and retail sales separately, he shall pay the tax as a retailer on both classes of his business.

(c) For the purpose of enforcing the collection of the tax levied by this act, the commissioner through his authorized agents may examine at all reasonable hours during the day the books, records, and other documents of all transportation companies, agencies, firms, or persons that conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or otherwise are shipping articles of tangible personal property which are liable for the tax. If the transportation company, agency, firm or person refuses to permit an examination of its or his books, records, and other documents by the commissioner, it or he shall be deemed guilty of a misdemeanor. Moreover, the Commissioner may proceed by citing the transportation company, agency, firm, or person to show cause before any court of record why the books, records, and other documents should not be examined pursuant to the injunction of the court, and why a bond should not be required with proper security in the penalty of not more than $2,000 conditioned upon compliance with the provisions hereof for a period of not more than one year.

Section 25. Sale of Business. – If any dealer liable for any tax, penalty, or interest levied hereunder sells out his business or stock of goods or quits the business, he shall make a final return and payment within fifteen days after the date of selling or quitting the business. The return shall include any sales made at retail during liquidation. His successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of taxes, penalties, and interest due and unpaid until the former owner produces a receipt from the commissioner showing that they have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as above provided, he shall be personally liable for the payment of the taxes, penalties and interest due and unpaid on account of the operation of the business by any former owner. Nothing heren shall be deemed to qualify or limit the exemption as to such a sale as is covered by section 5.

Section 26. Bond. – The commissioner, if necessary and advisable in order to secure the collection of the tax levied by this act, may require any person subject to the tax to file with him a bond of a surety company authorized to do business in this state as surety, in such reasonable amount as the commissioner fixes, to secure the payment of any tax, penalty or interest due or which may become due from the person. In lieu of a bond, securities approved by the commissioner may be deposited with the [state treasurer] which securities shall be kept in the custody of the [state treasurer], and shall be sold by him, at the request of the commissioner, at public or private sale, without notice to the depositor thereof, if necessary in order to recover any tax, penalty or interest due the state under this act. Upon the sale, the surplus, if any, above the amounts due under this act, shall be returned to the person who deposited the securities.

Section 27. Jeopardy Assessment. – If the Commissioner deems that the collection of any tax or any amount of tax, required to be collected and paid under this act, may be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of the assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for a current period, the commissioner may declare the taxable period of the taxpayer immediately terminated and shall cause notice of the finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and the tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any tax, penalty or interest is not paid upon demand of the

Commissioner, he shall proceed to collect it by legal process, or, in his discretion, he may require the taxpayer to file a bond sufficient to protect the interest of the state.

Section 28. Direct Payment Permits. – (a) Notwithstanding any other provision of this act, the commissioner may authorize (1) a manufacturer, mine operator, or public service corporation that is a user, consumer, distributor, or lessee to which sales, distributions, leases, or storage of tangible personal property are made under circumstances which normally make it impossible at the time thereof to determine the manner in which the property will be used by the person, or (2) any person who stores tangible personal property in this state for use both within and outside this state, to pay any tax levied by this act directly to this state and waive the collection of the tax by the dealer; but no such authority shall be granted or exercised except upon application to the Commissioner and the issuance by the Commissioner of a direct payment permit. If a direct payment permit is granted, payment of the tax on all sales, distributions, and leases, including sales, distributions, leases, and storage of tangible personal property and sales of taxable services for use known at the time thereof, shall be made directly to the commissioner by the permit holder.

(b) On or before the [twenty-eighth] day of each month every permit holder shall make and file with the commissioner a return for the preceding month in the form prescribed by the Commissioner showing the total value of the tangible personal property used, the amount of tax due from the permit holder (which amount shall be paid to the commissioner with such return) and such other information as the commissioner deems necessary. The commissioner, upon written request by the permit holder, may grant a reasonable extension of time for making and filing returns and paying the tax. Interest on the tax at the rate of one-half of one percent per month, or fraction thereof, shall be charged on every extended payment.

(c) It is the duty of every permit holder required to make a return and pay tax under this section to keep and preserve suitable records of purchases, together with invoices of purchases, bills of lading, and other pertinent records and documents in the form the commissioner requires by regulation. All records and other documents shall be open during business hours to the inspection of the commissioner or his duly authorized agents and shall be preserved for a period of four years, unless the commissioner, in writing, authorizes their destruction or disposal at an earlier date.

(d) A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the commissioner.

(e) Persons who hold a direct payment permit which has not been cancelled shall not be required to pay the tax to the dealer as otherwise herein provided. Such persons shall notify each dealer from whom purchases or leases of tangible personal property are made of their direct payment permit number and that the tax is being paid directly to the commissioner. Upon receipt of the notice, the dealer shall be absolved from all duties and liabilities imposed by this act for the collection and remittance of the tax with respect to sales, distributions, leases, or storage of tangible personal property to the permit holder. Dealers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each purchaser may be ascertained.

(f) Upon the cancellation or surrender of a direct payment permit, the provisions of this act, shall thereafter apply to the person who previously held the permit, and the person shall promptly notify in writing dealers from whom purchasers, leases, and storage of tangible personal property are made of the cancellation or surrender. Upon receipt of the notice, the dealer shall be subject to the provisions of this act, with respect to all sales, distributions, leases, or storage of tangible personal property thereafter made to the person.

Section 29. Vending Machine Sales. – Whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, the commissioner may authorize the dealer to prepay the tax and waive collection from the purchaser and may require the dealer to furnish bond sufficient to secure prepayment of the tax. The dealer shall be required to print upon the property sold or post on the vending machine a statement to the effect that the tax has been paid in advance. The terms and conditions of this section are inapplicable unless the dealer makes application to the commissioner for the authority herein contained, and unless the commissioner finds that the collection of the tax in the manner otherwise provided in this act is impractical.

Section 30. Tax Warrants. – The commissioner, when any tax becomes delinquent under this act, may issue a warrant for the collection of the tax, penalty, and interest from each delinquent taxpayer.

Section 31. Erroneous Assessments. – Upon any claim of an erroneous or illegal assessment or collection, the taxpayer shall have his remedy under the [cite applicable statutes]. The sections cited are applicable to all sales and use taxes imposed under this act.

Section 32. Period of Limitations. – The taxes imposed by this act shall be assessed within three years from December 31 of the year in which the taxes became due and payable; but in the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this act, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment at any time within six years from December 31 of the year in which the taxes became due and payable.

Section 33. Violation of Act by Dealer a Misdemeanor. – Any dealer subject to the provisions of this act who fails or refuses to furnish any return herein required to be made, or fails or refuses to furnish a supplemental return or other data required by the commissioner, or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this act, punishment for which is not otherwise herein provided, is guilty of a misdemeanor.

Section 34. Administration. – The commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this act. He shall design, prepare, print, and furnish to all dealers, or make available to them, all necessary forms for filing returns together with instructions to assure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to receive or procure forms or instructions, or both, shall not relieve him from the payment of the tax at the time and in the manner herein provided.

Section 35. Rules and Regulations. – The commissioner may make and publish reasonable rules and regulations not inconsistent with this act, other applicable laws, or the Constitution of this state, or of the United States, for the enforcement of the provisions of this act and the collection of the revenue hereunder.[1]

Section 36. Administration of Oaths. – The commissioner and such other officers or employees of the [department of taxation] as the commissioner authorizes in writing, may administer oaths for the purpose of enforcing and administering the provisions of this act.

Section 37. Secrecy of Information. – Except in accordance with proper judicial order, or as provided by law, it is unlawful for the commissioner or any agent, auditor, or other officer or employee to divulge or make known in any manner the amount of sales, the amount of tax paid, or any other particulars set forth or disclosed in any return required by this act. Nothing in this act shall be construed to prohibit the publication of statistics so classified as to prevent the identity of particular reports or returns and the items thereof, or the inspection by the legal representative of this state of the report or return of any taxpayer who applies for a review or appeal from any determination or against whom an action or proceeding is about to be instituted or has been instituted to recover any tax or penalty imposed by this act.

Section 38. Exchange of Information with Other Tax Officials. – The commissioner may furnish to the tax officials of any other state and its political subdivision, the political subdivisions of this state, the District of Columbia, and the United States and its territories, any information contained in tax returns and reports and related schedules and documents filed pursuant to the tax laws of this state, or in the report of an audit or investigation made with respect thereto: Provided, that said jurisdictions grant similar privileges to this state and that the information is to be used only for tax purposes.

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[1] States with personal income tax statutes may wish to add a provision as follows: The commissioner shall promulgate and publish sales tax deduction guides for the purpose of aiding the taxpayer in calculating allowable deductions, relevant to income taxes, which guides shall be based on the following factors: size of income, size of family, and rate of tax. The guides so promulgated shall not preclude any taxpayer from claiming as a deduction the amount of taxes, levied under the provisions of this act, actually paid by him.

Section 39. Personnel, Supplies, Equipment, Other Expenses. – The commissioner may employ all necessary personnel and purchase supplies and purchase or rent equipment and incur other expenses necessary for the administration of this act. All the costs and expenses shall be paid out of appropriations made to the [department of taxation].

Section 40. Separability. – If any provision of this act be held unconstitutional or invalid by a court of competent jurisdiction the same shall not affect the remaining provisions of this act but all such provisions not held unconstitutional or invalid shall remain in full force and effect. If, however, a court of competent jurisdiction holds that the sales tax or the use tax levied by this act is for any reason invalid in its relationship to national banks, it is hereby provided that state banks shall thenceforth enjoy immunity from such tax or taxes to the same extent as national banks.

Section 41. Effective date of tax. – The taxes imposed by this act shall be in full force and effect on and after [insert date].

LOCAL SALES TAX SUPPLEMENT

Where sales are taxed at both the state and local level, a logical administrative device is the tax supplement. The local rate is added to the state rate, both are collected by the state government, and the allocated share of collections is credited to the account of the local taxing jurisdiction.

The tax supplement has important advantages. It uses identical tax definitions (taxpayers, tax base, etc., preferably by reference) for both state and local purposes. Even where state definitions are imperfect, uniformity has important advantages for ease of compliance and economy of tax collection. The local supplement is collected together with the state tax, eliminating the need for duplicate administration, with corresponding alleviation of compliance burdens. Where the state charges the local jurisdiction a fee for collecting the local supplement, these charges supplement state resources appropriated for tax enforcement.

The tax supplement preserves the principle of leaving with local governing boards responsibility for the decision to impose the tax and, within limits prescribed by state law, to set the tax rate. Thus, each jurisdiction retains its freedom to balance the need for the additional local services against the added tax burden.

Because the proceeds of local sales tax supplements accrue by definition to the imposing jurisdiction, problems of allocating among jurisdictions present in grants-in-aid and shared revenues are generally avoided. By the same token, however, variations in need relative to local resources are disregarded except to the extent that latitude is provided in the sharing of countywide collections among incorporated cities and towns as is done in Tennessee.[1]

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[1] *Tennessee Laws of 1963,* chapter 329, 1963 Local Option Revenue Act, section 4.

The local sales tax supplement was first used by Mississippi in 1950 and has since spread to nine other states: California, Colorado (home rule cities optional), Illinois, New Mexico, New York, Ohio, Texas, Utah, and Virginia.[2] In three more states (Alabama, Oklahoma, and Tennessee), state administration is optional.

The suggested legislation preempts the local sales tax supplement for the unit of government having the largest jurisdiction – the county – on the theory that the larger the grographic area the less the impact of the tax on business competition between trading centers. Where counties do not exercise this authority, cities are authorized to do so.

The following suggested statutory language provides only for a local sales tax supplement to a state sales tax; it is not a complete sales tax statute. It would be used as an amendment in states that already have a state sales tax and wish to grant sales tax authority to their local governments. Alternatively, it could be incorporated into new legislation authorizing a state sales tax by states considering the adoption of such a tax coupled with the grant of additional authority to local governments to impose nonproperty taxes.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize uniform local sales and use taxes, and to provide for administration by the state."]

(Be it enacted, etc.)

Section 1. Short Title. This act may be cited as the "Uniform Local Sales and Use Tax Law."

Section 2.[3] *Authorization for Political Subdivisions.* Any county may adopt a sales and use tax in accordance with the provisions of this act by action of its local governing board; and any incorporated [city or town] situated within a county which has not imposed a sales and use tax may adopt a sales and use tax in accordance with the provisions of this act by action of its local governing board, but the tax imposed by any city or town shall terminate upon the effective date of any sales and use tax imposed by the county in which the city or town is situated.

Section 3. Contents of Local Law or Ordinance. The sales and use tax law or ordinance adopted under this act shall impose a sales tax for the privilege of selling tangible personal property at retail and a use tax upon the storage, use or other consumption of tangible personal property purchased outside the political subdivision for storage, use, or consumption in the political subdivision, and shall, in addition to any other provisions include provisions in substance as follows:

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[2] *California Revenue and Taxation Code;* section 7200, *Colorado Revised Statutes,* Chapter 328; *Illinois Revised Statutes,* section 8-11; *Mississippi Code Annotated,* section 10111.5; *New Mexico Statutes Annotated,* section 14-39; *New York Tax Law,* chapter 60, act 29, subpart B, section 1210; *Ohio Laws of 1967,* H.B. 919; *Texas Laws of 1967,* H.B. 207; *Utah Code Annotated,* Title II, chapter 9; *Virginia Code Annotated,* section 58-441.49.

[3] For a local supplement in two or more counties comprising a trading area, see alternative section 2 at the end of this proposal.

(1) A provision for imposing a tax for collection by every retailer in the political subdivision at the rate of [ ] percent of the gross receipts of the retailer from the sale of all tangible personal property sold by him at retail in the political subdivision, and a provision imposing a complementary tax upon the storage, use, or other consumption in the political subdivision of tangible personal property purchased outside the political subdivision for storage, use, or other consumption in the political subdivision at rate of [ ] percent of the sales price of the property, but nothing herein shall be construed to make inapplicable any exemptions of particular classes of articles, commodities, or services, in accordance with law.

(2) A provision that the storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to sales tax under a sales and use tax law or ordinance enacted in accordance with this act by any other county, or incorporated city or town in this state, shall be a credit against the tax due under this act.

(3) Provisions incorporating by reference [statutory citation of the state sales and use tax law] except that an additional [seller's permit] shall not be required if one has been or is issued to the seller by the state.

(4) A provision that all relevant provisions of [statutory citation of the state sales and use tax law], as they may be from time to time, and not inconsistent with this act shall govern transactions, proceedings, and activities pursuant to the local law or ordinances.

(5) A provision designating the [state tax department] to perform all functions incident to the administration of the sales and use tax law or ordinance of the political subdivision.

(6) A provision that the amount subject to tax shall not include the amounts of any sales tax or use tax imposed by [statutory citation of the state sales and use tax law].

***Section 4. State Administration.* The administration of local sales and use taxes adopted under this act shall be by the [state tax department] which may prescribe forms and reasonable rules and regulations in conformity with this act for the making of returns and for the ascertainment, assessment, and collection of the tax imposed pursuant hereto. The [state tax department] shall keep full and accurate records of all monies received and distributed under this act.**

***Section 5. Distribution of Collections.* All sums received and collected on behalf of a particular political subdivision pursuant to this act shall be credited to a special local sales and use tax fund which is hereby established in the state treasury and, after deducting the amount of refunds made, the amounts necessary to defray the cost of collecting the tax, and the administrative expenses incident thereto, shall be paid within [10] days after collection to the political subdivision entitled thereto.**

[Section 6. Distribution of Collections Among Local Governments. The state legislature may wish to provide that when the county preempts the sales tax field the proceeds be divided among the county and local units of general governments within the county.[4]]

Section 7. Separability. [Insert separability clause.]

Section 8. Effective Date. [Insert effective date.]

Local Supplement to a State Sales Tax by Two or More Counties Comprising a Trading Area

In some states the pressure for additional revenue to finance more and costlier government services is felt most acutely by governments making up an economic or trading area. Yet, the shadow of intercommunity competition can effectively restrain local governments, in such areas from using a local supplement to the state sales tax. States may wish to consider authorizing counties located within retail trading areas to impose by mutual and unanimous agreement a uniform, areawide supplement to the state sales tax without at the same time extending such authority to all counties or other units of local government throughout the state.

The Maryland legislature adopted this approach in 1965 when it authorized each of the units of local general government in the Baltimore Metropolitan Area, City of Baltimore, and Baltimore and Anne Arundel counties, to impose a supplementary rate to the state sales tax as long as all three jurisdictions did so.[5] The Maryland jurisdictions have not implemented the enabling legislation. Similar authority was enacted by the Colorado legislature in 1961 for jurisdictions in the Denver Metropolitan Area.[6] The Colorado experiment foundered on legal grounds involving municipal home rule powers.

The suggested legislature below presents alternative language for section 2 which would authorize two or more counties making up a trading area to impose concurrently a local supplement to a state sales tax.

Section 2. Authorization for Counties Within a Trading Area. (a) County Authorization. A county located in a standard metropolitan statistical area designated as such by the United States Bureau of the Census in the most recent census of population may adopt a sales and use tax in accordance with the provision of this act by action of its local governing board if the governing boards of each county in its standard metropolitan statistical area within this state by mutual and unanimous agreement adopt the identical tax authorized by this act.

(b) Limitation on Withdrawal. A county participating under the authority granted in this act may withdraw from such mutual and unanimous agreement by action of its local governing board after first giving at least 120 days notice of the contemplated withdrawal to the [state tax department] and to the governing boards of the other participating counties. The withdrawal shall be effective from and after the [first day of the next succeeding fiscal year], and the local laws and ordinances imposing the tax in the other counties of the trading area shall no longer be of any force or effect. Nothing in this subsection shall be construed or applied to prevent or interfere with the collection of tax monies which were lawfully due and payable while the tax was effective, and any money collected by the [state tax department] after the tax has been repealed and discontinued shall be accounted for and distributed as required in this act.

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[4] Tennessee (Laws of 1963, chapter 329, 1963 Local Option Revenue Act, section 4) provides that one-half of the proceeds shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed. It further provides that the other half shall be distributed as follows: (a) collections in unincorporated areas, to the county general fund; (b) collections in incorporated cities and towns, to the city or town in which the privilege is exercised; (c) provided, however, that a county and city or town may by contract provide for other distribution of the half not allocated for school purposes.

[5] *Annotated Code of Maryland 1957,* article 81, section 411A.

[6] Colorado Laws of 1961, chapter 179.

15-62-411

PROPERTY TAX SURVEY COMMISSION

This bill authorizes the creation of a Property Tax Survey Commission to examine certain basic property tax policy issues which must be resolved by each state. These policy issues include: (a) the adequacy of the legal structure underpinning property tax administration, (b) exemptions from taxation, (c) changes in tax rate and debt limits which would be required if market value determinations based on assessment-sales ratio studies replace assessed valuations as the measurement base, and (d) the extent to which the state should become involved in the actual administration of the property tax.

Each state should take a hard, critical look at its property tax laws and rid it of all features that are impossible to administer as written, which force administrators to condone evasion, and which encourage taxpayer dishonesty. Ad valorem taxes on most classes of property, real and personal, can be administered with reasonable competence if a state is willing to provide suitable means; but the extent to which some personal property tax laws have become legal fictions is notorious. Evasion and condoning of evasion are so widespread as to make such laws a tax on integrity.

The use of exemptions from property taxes without regard for their secondary effects has drastically changed the distribution of the property tax burden and a re-examination of exemptions is urgently needed. States have long had a propensity, which is continuing, to fritter away the local property tax base by concealed subsidies in the form of special tax exemptions to promote private causes of questionable public importance, provide welfare aid, advance undertakings for social and economic reform, and reward public service. Typically these special tax exemptions are mandatory upon local taxing jurisdictions; they have to be honored by them, regardless of their revenue cost or the preference of the local community.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act creating a property tax survey commission, and for related purposes."]

(Be it enacted, etc.)

Section 1. Property Tax Survey Commission. There is hereby created a property tax survey commission of [ ] members for the purpose of making a thorough examination of the property tax and its administration. The commission shall make a report of its study and examination together with such specific recommendations as it may adopt to the governors and to the legislature not later than [ ] of each [ ] numbered years.

Section 2. Commission Duties. The commission shall:

(1) ascertain whether the [state tax agency] is making adequate provision for continuing study and analysis of the property tax so as to insure that this revenue source is given attention commensurate with its major importance in the overall state and local revenue structure;

(2) determine (i) whether provision of the constitution or any statute, ordinance or charter unduly restricts legislative or administrative flexibility and responsibility for producing and maintaining

a productive and administrable property tax system and, (ii) whether the property tax laws need revision or recodification;

(3) examine the state's property tax exemption policies and make recommendations implementing the principle that exemptions be provided only on clear demonstration of public interest and be limited to those cases in which the tax exemption method is preferable to outright grants supported by appropriations;

(4) examine the question of reimbursing local communities for the amounts of tax loss sustained in the instance of mandatory tax exemptions;

(5) Make a thorough review of all classes of partial and total exemptions from tax liability based on assessed valuations made by assessment officials, study the desirability of their continuance from the point of view of sound policy, and with respect to those exemptions that may be continued, recommend adjustments as would be called for by the adoption of the market value determinations made or to be made by the [state tax agency] as the uniform measure for all exemptions from property tax liability;[1]

(6) study all limits on the taxing and borrowing powers of local governments imposed by state law or municipal charter that are related to assessed valuation set by local assessment officials; consider the desirability of their continuance or modification, and for any that may be continued recommend adjustments as would be made necessary by the adoption of the market value determinations made or to be made by the [state tax agency] as the uniform base for restricting the taxing and borrowing powers of local government;

(7) study all state financial grants to school districts and local governments that are measured by assessed valuations set by local assessment officials and recommend adjustments as may be necessitated by the adoption of the market value determinations of the [state tax agency] as an equalized measure of local fiscal capacity and tax effort;

(8) evaluate the structure, powers, facilities, and competence of the [state tax agency] and local property tax offices and on the basis of the evaluation recommend an organizational policy from among the following alternatives:

(i) centralized property tax administration, with each local government determing the amount of its own tax levies, within any applicable limitations, and with the state providing all professional services for the assessment, collection and enforcement of the property tax liability;

(ii) centralized property assessment administration, with the valuations certified to local officials as the basis for their billing and collection of taxes;

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[1] To the extent that exemptions can be justified, the tax credit method employed by some states has considerable merit because it completely removes the assessor from dollar determinations of the privilege.

(iii) coordinated joint state-local administration with the [state tax agency] granted all appropriate supervisory powers and facilities but whose assessment responsibilities would be confined to property of types that customarily lie in more than one district and do not lend themselves to piecemeal local assessment, that require appraisal specialists beyond the specialized skills of most local district staffs, and that can be more readily discovered and valued by a central agency than by a local assessment office; or

(iv) some other uniform method of property assessment administration.

(9) evaluate the present administrative-judicial appeal procedure for assessment review in order to determine whether taxpayers have ready and inexpensive access to effective legal remedies, and make recommendations with respect thereto.

***Section 3. Commission Membership.* The governor shall appoint the members of the commission and shall designate the chairman thereof. The term of each commissioner authorized shall be [four] years. Any vacancy on the commission shall be filled in the same manner as original appointments thereto and shall be for the unexpired term.**

***Section 4. Staff.* The commission may employ such research or administrative staff as it deems necessary within or without the [state merit system].**

***Section 5. Hearings.* The commission may hold public hearings in various parts of the state and prescribe any necessary rules for the conduct thereof.**

***Section 6. Per Diem and Expenses.* Members of the commission shall receive per diem of $[ ] for each full day of attendance at a meeting of the commission plus their actual and necessary expenses incurred in the discharge of their official duties. Members of the commission who are salaried members of the legislature or full-time public officers or employees shall not receive per diem but shall be entitled to reimbursement for their actual and necessary expenses.**

***Section 7. Duration.* Sections 1-6 of this act shall cease to be of any force or effect on and after [four years after effective date of this act] and the commission established hereby shall terminate as of [same date].**

***Section 8. Appropriation.* [Use this section to make initial appropriation to the commission.]**

***Section 9. Separability.* [Insert separability clause.]**

***Section 10. Effective Date.* [Insert effective date.]**

15-62-412

PROPERTY TAX ORGANIZATION AND ADMINISTRATION

In 49 of the 50 states (all except Hawaii), property assessment administration is a joint state and local responsibility. Most recent efforts to improve the quality of property assessment have concentrated on making the joint system work better. To knit this two-level system into a well-coordinated, smoothly-functioning organization is difficult but possible of accomplishment.

The prevailing pattern for state-local property tax administration, subject to innumerable variations, is: (1) local assessment districts responsible for the bulk of the primary assessing; (2) local or county boards of review; (3) county boards of equalization; and (4) a state agency or agencies responsible variously for supervision of local assessing, provision of technical aid to local assessors, hearing taxpayer appeals, interarea equalization of assessment, central assessment of some classes of property, and valuation research.

The proposal would provide for well-coordinated state-local administrative organization with a central directing authority. At the state level, administrative responsibilities would be vested in a single agency professionally organized and equipped for the job, with adequate powers of supervision and regulation clearly defined by law. At the local level, county assessment units would be organized and staffed so as to make competent assessing feasible. The overall goal is to produce a workable apportionment of two-level responsibilities, with careful coordination of assessment standards and procedures.

The suggested legislation vests in the single state agency responsibility for assessment supervision and equalization, assessment of all state assessed property, and valuation research, with adequate powers clearly defined by law. It provides that no assessment district shall be less than countywide, and when, as in many instances, counties are too small to comprise efficient assessment districts, the bill authorizes the creation of multi-county assessment districts. In order to eliminate wasteful duplication of assessment effort, all overlapping assessment districts (township and municipal) are eliminated. It also provides that county assessors be appointed on the basis of demonstrated merit and be subject to removal for good cause by the appointing official.

It should be noted that the suggested act in setting forth the qualifications for assessors and appraisers makes no mention of residence requirement. Since it is desirable to encourage the employment of assessors and appraisers on a professional basis, the Advisory Commission on Intergovernmental Relations recommends that states omit a residence requirement. If this is to be done, it may be necessary to make an appropriate exception by amending the relevant general personnel statutes or by writing an affirmative exemption into this statute.

This draft legislation draws on Oregon, Maryland, and Kentucky experience, particularly as it relates to the provision of state technical assistance to local assessment jurisdictions.

15-62-412

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act establishing a division of property taxation within the [state tax agency]; providing for the qualifications, duties, and responsibilities of county assessors and related personnel; providing for state-county relations in respect of assessment and appraisal of property, and for related purposes."]

(Be it enacted, etc.)

Section 1. Division of Property Taxation.[1] (a) There shall be in the [state tax agency] a division of property taxation, hereinafter called the "division." The head of the division shall be the director, appointed by the [head of the state tax agency] in accordance with the provisions of the [state merit system law]. The director shall serve in accordance with the provisions of such law. He shall have experience and training in the fields of taxation and property appraisal.

(b) The employees of the division shall be in the [state merit service]. The director may contract for the services of expert consultants to the division.

(c) In addition to any duties, power, or responsibilities otherwise conferred upon the division, it shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to ad valorem taxation. Whenever the division assesses or appraises property, or provides services therefor, it shall prescribe the methods and specifications for such assessment or appraisal.

Section 2. Assessors and Appraisers, Qualifications and Certification. (a) Except as expressly permitted by statute, no person shall perform the duties or exercise the authority of an assessor or appraiser of property in or on behalf of any county unless he is the holder of an assessor's or appraiser's certificate, as the case may be, issued by the division.

(b) The division shall provide for the examination of applicants for such certificates. No certificate shall be issued to any person who has not demonstrated to the satisfaction of the division that he is competent to perform the work of an assessor or appraiser, as the case may be; but any applicant for a certificate who is denied the same shall have a right to review of such denial [in accordance with the state administrative procedure act] [by a court of appropriate jurisdiction].

Section 3. Collection and Publication of Property Tax Data.[2] (a) The division annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and overall compliance with assessment requirements for each major class of property in each county in the state. In order to determine the degree of assessment uniformity and compliance in the assessment of major classes of property within each county, the division shall compute the average dispersion. As used in this section, "average dispersion" means the percentage which the average of the deviations of the assessment ratio of individual sold [or appraised] properties bears to their median ratio.

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[1] As an alternative for states in which organization for tax administration is diffused, the agency should be given prominence as a separate department or bureau. It may be desirable to have the career administrator serve under a multimember commission appointed for overlapping terms.

[2] Subsection (a) of this section is similar to section 3, and subsection (c) of this section is similar to section 5 of the act entitled "An act establishing assessment standards and performance measurements; establishing interdistrict and intradistrict tax equalization procedures, and for related purposes," which appears below. This duplication is necessary because the provisions are desirable in each act standing alone.

(b) The division may require assessors and other local officers to report to it data on assessed valuations and other features of the property tax for such periods and in such form and content as the division shall require. The division shall so construct and maintain its system for the collection and analysis of property tax facts as to enable it to make intrastate comparisons as well as interstate comparisons based on property tax and assessment ratio data compiled for other states by the United States Bureau of the Census, or any agency successor thereto.

(c) The [state tax agency] shall publish annually the findings of the division's assessment ratio studies together with digests of property tax data.

Section 4. Tax Exemption Information. The county assessor regularly shall assess all tax exempt property within the county, calculate the total assessed valuation for each type of exemption, and compute the percentages of total assessed valuations thus exempt. The totals and computations thus made and obtained, together with summary information on the function, scope and nature of exempted activities, shall be published annually by the county.

Section 5. Forms. The division shall devise, prescribe, [supply,] and require the use of all forms deemed necessary for effective administration of the property tax laws. So far as practicable the forms shall be uniform, but nothing herein shall be deemed to prevent the prescribing of substitute or additional forms where special circumstances require.

Section 6. Tax Maps. The division shall require each county assessor to maintain tax maps in accordance with standards specified by the division. Whenever necessary to correct mapping deficiencies, the division shall install standard maps or approve mapping plans and supervise map production. The [state tax agency] [shall] [may] require the county to reimburse the state for tax maps installed by the division. The amount or amounts of such reimbursement shall be deposited in the [state treasury] to the account of the [state tax agency].[1]

Section 7. Provision of Tax Manuals and Guides. The division shall prepare, issue, and periodically revise guides for local assessors in the form of handbooks of rules and regulations, appraisal manuals, special manuals and studies, cost and price schedules, news and reference bulletins and digests of property tax laws suitably annotated.

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[1] In place of the last two sentences of section 6, a state may prefer the following: Costs of map production and installation incurred pursuant to this section shall be county charges.

Section 8. Data Processing. To expedite the preparation of assessment rolls, tax rolls, and tax bills, the division is authorized to take action as may be appropriate to enable counties to receive the benefits of modern data processing methods.

Section 9. Provision of Engineering, Professional and Technical Services. Whenever a county by or pursuant to action of its [governing board] requests the [state tax agency] to provide engineering, professional or technical services for the appraisal or reappraisal of properties, the [state tax agency] may, within its available resources, and in accord with its determination of the need therefor, provide these services. The county shall pay to the [state tax agency] the actual cost of the services in accordance with a schedule of standard fees and charges furnished, and from time to time, revised by the [state tax agency]. All payments received by the [state tax agency] pursuant to this section shall be deposited in the [state treasury] to the account of the [state tax agency].

Section 10. Appraisal of Major Industrial and Commercial Properties. The division shall provide to each county or multi-county assessment district the services of certified appraisers for the appraisal of major industrial and commercial properties. The properties to be appraised shall be determined by the division after consultation with county assessors. In making such determinations, the division shall take into account the ability of the county assessor to perform such appraisals with the resources at his disposal. [Provide for such reimbursement or county charge as may be appropriate.]

Section 11. Inspections, Investigations and Studies. The division may make such inspections, investigations and studies as may be necessary for the adequate administration of its responsibilities pursuant to this act. Such inspections, investigations and studies may be made in cooperation with other state agencies, and, in connection therewith, the division may utilize reports and data of other state agencies.

Section 12. Training Programs. The division shall conduct or sponsor in-service, pre-entry, and intern training programs on the technical, legal, and administrative aspects of the assessment process. For this purpose it may cooperate with educational institutions, local, regional, state, or national assessors' organizations, and with any other appropriate professional organizations. The division may reimburse the participation expenses incurred by assessors and other employees of the state and its subdivisions whose attendance at in-service training programs is approved by the division.

Section 13. Enforcement of Assessment and Appraisal Standards. (a) In order to promote compliance with the requirements of law, the division shall issue and, from time to time, may amend or revise rules and regulations containing minimum standards of assessment and appraisal performance. Such standards shall relate to: (1) adequacy of tax maps and records; (2) types and qualifications of personnel; (3) methods and specifications for the appraisal or reappraisal of property; and (4) administration. For failure to meet the standards contained in the rules and regulations the division may suspend, in whole or in part, performance of the assessment or appraisal function by a county.

(b) If the division finds that a county has failed or is failing to meet the standards contained in the rules or regulations in force pursuant to subsection (a) of this section, it shall notify the county assessor of the fact and nature of the failure. The notice shall be in writing and shall be served upon the county assessor and the [county governing board].

(c) If within one year from the service of the notice the failure has not been remedied, the division may, at any time during the continuance of such failure, issue an order requiring the county assessor and [county governing board] to show cause why the authority of the county with respect to assessments or any matter related thereto should not be suspended, shall set a time and place at which the director of the division shall hear the county assessor and [county governing board] on the order, and after the hearing shall determine whether and to what extent the assessment function of the county shall be so suspended.

(d) During the continuance of a suspension pursuant to subsection (c) of this section, the division shall succeed to the authority and duties from which the county has been suspended and shall exercise and perform the same. Such exercise and performance shall be a charge on the suspended county. The suspension shall continue until the division finds that the conditions responsible for the failure to meet the minimum standards contained in the rules and regulations of the division have been corrected.

(e) Any county aggrieved by a determination of the division made pursuant to this section or alleging that its suspension is no longer justified may have review of such determination or continued suspension [as provided in the state administrative procedure act] [by a court of appropriate jurisdiction].

Section 14. County Assessor. **(a) On and after [January 1, 19[ ]] the county assessor shall be appointed by the [chief executive officer of the county] and shall hold office [for an indefinite term] [for a term of five years]. No person shall be eligible for appointment as county assessor who does not hold an assessor's certificate issued by the division pursuant to section 2 of this act.**

(b) A county assessor may be removed from office by the [chief executive officer of the county] or by the commissioner of the [state tax agency]. The [chief executive officer] may not remove such assessor, except for cause and the commissioner may remove such assessor only for failure to comply with the orders of the division. [Add provision making appropriate statute relating to hearings and appeals applicable, or supply procedural detail.]

(c) Notwithstanding any provision of this section, any county assessor holding office on the effective date of this act by virtue of election by the people shall be entitled to complete the term for which he was elected.

[(d) If other statutes or provisions of local law do not affirmatively empower county assessors to assess, appraise and classify property, use this subsection to confer such power.]

Section 15. Governing Valuations. [Each local taxing unit] shall be bound by the assessed valuations established by the county assessor for all property subject to its taxing power.

Section 16. Multi-County Assessment Districts.[1] (a) Any two or more contiguous counties may enter into an agreement for joint or cooperative performance of the assessment function.

(b) Such agreement shall provide for:

(1) the division, merger, or consolidation of administrative functions between or among the parties, or the performance thereof by one county on behalf of all the parties;

(2) the financing of the joint or cooperative undertaking;

(3) the rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement;

(4) the duration of the agreement and procedures for amendment or termination thereof; and

(5) any other necessary or appropriate matters.

(c) The agreement may provide for the suspension of the powers and duties of the office of county assessor in any one or more of the parties.

(d) Unless the agreement provides for the performance of the assessment function by the assessor of one county for and on behalf of all other counties party thereto, the agreement shall prescribe the manner of appointing the assessor, and the employees of his office, who shall serve pursuant to the agreement. Each county party to the agreement shall be represented in the procedure for choosing such assessor. No person shall be appointed assessor pursuant to an agreement who could not be so appointed for a single county. Except to the extent made necessary by the multi-county character of the assessment agency, qualifications for employment as assessor or in the assessment agency, and terms and conditions of work shall be similar to those for the personnel of a single county assessment agency. Any county may include in any one or more of its employee benefit programs an assessor serving pursuant to an agreement made under this section and the employees of his assessment agency. As nearly as practicable, such inclusion shall be on the same basis as for similar employees of a single county only. An agreement providing for the joint or cooperative performance of the assessment function may provide for such assessor and employee coverage in county employee benefit programs.

(e) No agreement made pursuant to this section shall take effect until it has been approved in writing by the commission of the [state tax agency] and the [attorney general].

(f) Copies of any agreement made pursuant to this section, and of any amendment thereto, shall be filed in the office of the [secretary of state] and the [state office of local government].

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[1] The possibility of including this paragraph may depend in a particular state on constitutional or statutory considerations.

Section 17. State Performance of County Assessment Function. The [governing board] of a county may, [by resolution], request the [state tax agency] to assume the county assessment function and to perform the same in and for the county. If the commissioner of the [state tax agency] finds that direct state performance of the function is necessary or desirable to the economic and efficient performance thereof, he may direct the division to undertake such performance pursuant to the request. Unless otherwise authorized by law, the division shall undertake and perform the function only after the execution of a suitable agreement between the county and the [state tax agency] providing for responsibility for costs. During the continuance of performance of the county assessment function by the division, the office and functions of the county assessor shall be suspended, and the performance thereof by the division shall be deemed performance by the county assessor.

Section 18. Discontinuance of Certain Assessors' Office. On and after [date] assessment of property for purposes of taxation, unless pursuant to agreement as authorized in section 16 of this act, shall be only by the county and state in accordance with law. However, any assessor in office on [date] who is serving a fixed term as provided by statute or local law may continue in office until the expiration of such term, and the jurisdiction of which he is the assessor shall continue to have the assessment function previously conferred upon it until the expiration of such term. Any vacancy in an elective or appointive office permitted to continue by reason of this section shall be filled only for the unexpired portion of the term.

Section 19. Separability. [Insert separability clause.]

Section 20. Effective Date. [Insert effective date.]

15-62-413

PROPERTY TAX ASSESSMENT STANDARDS AND EQUALIZATION

The laws of most states provide for the assessment of property at market value. Nevertheless, fractional assessment is a pervasive practice. Recent assessment ratio findings indicate that on a nationwide basis, residential real estate is being assessed at less than 30 percent of market value. Moreover, most states have not equalized local assessment levels at any uniform percentage of market value.

One possible course of action is for state tax authorities to order local tax officials to raise depressed assessment levels to the legal valuation standard.

For states not wanting to take this approach, the conflict between law and practice can be resolved by amending state assessment laws to bring them into harmony with fractional valuation practice. Either of two courses of action appears to be possible. One, a state can repeal the full value assessment laws, select a percentage figure which conforms most nearly to prevailing local assessment practices, and direct that assessment levels be brought into line with this fractional valuation standard. Two, a state can give assessors discretion to assess property within their respective jurisdictions at any uniform percentage of current market value (subject to the enforcement of a specific minimum level of assessment). In this case the state supervisory agency should determine annually by assessment ratio studies the average level of assessment in each county and make this information available to taxpayers.

The draft legislation incorporates the second approach – the flexible local assessment standard – reinforced by state assessment ratio findings. The requirement of a minimum level guards against the danger that the quality of assessing will deteriorate if the assessment level is too low.

To secure intracounty tax equalization, the draft legislation requires all classes of property within a county to be assessed at a uniform percentage of current market value. The legislation directs the state tax agency to make county assessment ratio studies and, following the example set by Oregon, to give their findings the widest possible circulation. The features of this legislation which provide for maximum publicity to be given assessment ratio and related information are of special importance because they would furnish knowledge on the basis of which administration and compliance could be improved.

To secure intercounty equalization, the draft legislation directs a taxing unit such as a sewer district lying in more than one county to apportion its levy among the counties in which it is situated in accordance with the market value determinations derived from assessment ratio studies made by the state tax agency. This approach, pioneered by Wisconsin, permits an equitable distribution of the tax load without state-ordered adjustments in local assessment levels.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act establishing assessment standards and performance measurements; establishing interdistrict and intradistrict tax equalization procedures, and for related purposes."]

(Be it enacted, etc.)

Section 1. Definitions. As used in this act:

(1) "Current market value" means the estimated price a property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing

buyer, both conversant with the property and with prevailing general price levels.

(2) "Assessment level" means the percentage relationship which the assessed value of taxable property bears to its current market value.

(3) "Assessment ratio study" means the comparison, on a sampling basis, of the current market value determined from the best information available which may include, but is not limited to appraisals, deed recordings, documentary or tax stamps and statements of parties to the transaction with their assessed valuations, and the application of statistical procedures to determine assessment levels and to measure nonuniformity of assessments.

(4) "Average dispersion" means the percentage which the average of the deviations of the assessment ratios of individual sold [or appraised] properties bears to their median ratio.

Section 2. Tax Base Determination. All classes of taxable property shall be assessed at the same percentage of current market value within each county. No assessment level shall be lower than [ ] percent of current market value as found by the assessment ratio studies made by the division of property taxation [of the state tax agency], hereinafter called the "division." Whenever the prevailing general assessment level within a county, as shown in an assessment ratio study, is below the minimum assessment level in force pursuant to this section and the division deems it necessary to the proper administration of the tax laws to order such uniform percentage adjustments in the assessment base, it may issue such order. Whenever such prevailing general assessment level is 10 percent or more below the minimum assessment level in force pursuant to this section, the county assessor shall make such uniform percentage adjustment in the assessment base as is necessary to secure compliance with law. The failure of the division to issue an order pursuant to this paragraph shall be of no evidentiary significance in any proceeding for the abatement or modification of an assessment.

Section 3. Preparation of Assessment Ratio Studies. The division annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity and overall compliance with assessment requirements for each major class of property in each county in the state. In order to determine the degree of assessment uniformity and compliance in the assessment of major classes of property within each county, the division shall compute the average dispersion.

Section 4. Notice to Assessor and [Chief County Fiscal Officer]; Hearing. (a) At least [sixty] days prior to the issuance of an assessment ratio study, the division shall furnish each county assessor and each [chief county fiscal officer] a copy of the tentative assessment ratio study for his county. The copy shall be accompanied by a notice stating that, unless the assessor or [chief county fiscal officer] files a written demand for a hearing thereon, the tentative assessment ratio study, together with all findings, shall be final.

(b) Upon demand for hearing filed pursuant to subsection (a) of this section, the division shall fix a hearing. The hearing shall be not less than [ten] days nor more than [twenty] days from the date when the demand therefor is received, but in no event shall such hearing be less than [five] days from the date notice is served upon the county assessor and [chief county fiscal officer] of the county from which a demand has been filed.

(c) As promptly as may be after such hearing, the division shall inform the county assessor and [chief county fiscal officer] whether it has determined to make any changes in the tentative assessment ratio study, and if so, of their precise content. If the county assessor or [chief county fiscal officer] is not satisfied with the study as then proposed to be issued, he may have review of any finding ing or findings, contained therein which formed the basis of the demand for hearing, [as provided in the state administrative procedure act] [by a court of appropriate jurisdiction].

[(d) For the purposes of this section, the assessor for a multi-county assessment district shall be deemed the assessor in and for every county for which he is in fact the assessor by virtue of the agreement made pursuant to [cite appropriate section of statute authorizing multi-county assessment districts].]

Section 5. Publication of Assessment Ratio Information. Immediately on the issuance thereof, the division shall publish each of its assessment ratio studies and shall publish a summary of each such study in convenient form. The division shall take such additional steps as may be appropriate to disseminate to the general public the information contained in its studies.

Section 6. Property Tax Equalization. (a) Whenever, in the view of the division, an assessment ratio for a particular class of property within a county deviates to the degree that a uniform adjustment in the assessment base is necessary for the proper administration of the tax laws, the division shall order the county assessor to make uniform adjustments in the assessment base as are necessary to remove such deviation. A deviation of 10 percent or more shall require the division to issue such order. The failure of the division to issue an order pursuant to this subsection shall be of no evidentiary significance in any proceeding for the abatement or modification of an assessment.

(b) In any case where a [tax levying unit of government] is situated in more than one county, the state and the [tax levying unit of government] shall apportion their tax levies among the various counties in the same proportion that the current market value of the property subject to the tax of the [tax levying unit of government] in each county bears to the current market value of all property subject to the tax of the [tax levying unit of government]. Such apportionment shall be based upon the current market value determinations derived from the annual assessment ratio studies made by the division. Thereafter the tax rates of the [tax levying unit of government] shall be fixed in the respective counties in such manner as is calculated to raise the amounts so apportioned when applied to the assessed values therein.

Section 7. Separability. **[Insert separability clause.]**

Section 8. Effective Date. **[Insert effective date.]**

15-62-414

PROPERTY TAX REVIEW AND APPEAL PROCEDURE

In many states the hierarchy of administrative and judicial review and appeal agencies for the protection of the property taxpayers is elaborate; but actual protection under the various systems is illusory because, first, the tribunals to which the taxpayer must appeal are not well constituted and staffed for the purpose and second, the burden of proving his case is too onerous and costly. The small taxpayer, in particular, is helpless if he has no simple, inexpensive, and dependable recourse. While numerous states have been undertaking to improve assessment administration by such means as better state supervision, better training for assessors, statewide revaluations, experimentation with fractional assessment, and the use of assessment ratio studies for equalization purposes, they have tended to ignore the need to improve the procedure for assessment review and appeal.

This legislation provides procedures for the hearing and determination of taxpayer protests of assessments. Such protests would be heard by county assessors or local boards of property tax review or, in the case of state assessed property, by the commissioner of the state tax agency. Appeals could be taken from these initial review agencies to a state tax court, established by the suggested act. At each level of review, emphasis is placed on informality of procedure. At the state tax court level a small claims procedure is established.

The legislation specifically provides that the parties to an assessment protest proceeding may make use of data contained in assessment ratio studies. In any proceeding relating to a protested assessment the court or other review agency is directed to accept as conclusive evidence of inequitable assessment a proven deviation of 10 percent or more from the relevant county assessment ratio and grant appropriate relief.

Since other provisions of the suggested legislation here presented make such assessment ratio studies freely available, the result should be a simplification of evidence gathering and presentation in litigation relating to assessments. The appeals procedure above is patterned along the general lines of the Maryland and Massachusetts review systems.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion. "An act providing for protests of assessments, establishing a state tax court, and for related purposes."]

(Be it enacted, etc.)

Section 1. Jurisdiction to Hear Protest. A taxpayer who desires to protest an assessment of his property may make such protest as provided in this act. Jurisdiction to hear and determine protest of assessments shall be only in the courts and agencies upon whom such jurisdiction is conferred by this act.

Section 2. Assessors and Boards of Review. (a) In all counties of less than [ ] population there shall be a [local board of property tax review] to consist of [specify membership, method of appointment, and term]. Such board shall hear and determine assessment protests, and shall have power to alter or modify any protested assessment in order that it may conform with law. In connection therewith, the board may make such review of assessments and order such equalization thereof as may be necessary. At any time when the county assessor has in his regular employ [three] or more appraisers holding appraiser's certificates issued by the division of property taxation [of the state tax agency], hereinafter called "division," one of such appraisers shall sit with and advise the board, but no appraiser shall sit with the board on its hearing of, or advise the board concerning any protest of an assessment of property previously appraised by him.

(b) In any county [ ] or more population, the county assessor shall have in his regular employ at least [three] appraisers holding appraiser's certificates issued by the division. In any such county, the county assessor shall have the functions and jurisdiction of a [local board of property tax review] and there shall be no such board. In hearing and determining a protest of an assessment the assessor shall be assisted by an appraiser regularly employed in his office who has not previously appraised the property in question.

(c) If the assessment function is performed by an assessor acting for and on behalf of more than one county as provided in an agreement made pursuant to [cite appropriate section of state statute authorizing multi-county assessment districts], a protest of assessment shall be heard and determined by the assessor's office functioning under such agreement, if the office has in its regular employ at least [three] appraisers holding appraiser's certificates from the division or a [local board of property tax review] established by the agreement.

(d) In the case of property assessed by the state, neither a [local board of property tax review] nor a county assessor shall have jurisdiction to hear or determine a protest. Any such protest shall be heard and determined by the [head of the state tax agency].

(e) Review of determinations of a [local board of property tax review], a county assessor when acting on a protest of assessment, and of determinations of the [head of the state tax agency] when acting on a protest of assessment, may be had only in the state tax court as established in section 4 of this act.

Section 3. Initiation of Protests. (a) Within [thirty] days of his receipt of a notice of assessment or reassessment of property, the owner thereof may protest such assessment or reassessment. The protest shall be in writing on a form provided by the [county assessor] [division]. The protest may include or be accompanied by a written statement of the grounds for the protest, and may include a request for a hearing. The protest, together with the accompanying statement, if any, shall be filed with the county assessor having jurisdiction to hear the protest or the [local board of property tax review], as the case may be. Thereupon, such county assessor or [local board of property tax review], if a hearing has been requested, shall fix the time and place where the protest shall be heard and shall serve a notice thereof on the protesting taxpayer.

(b) If the taxpayer has requested a hearing, but does not appear in person, he may appear by an agent. Such agent shall have power to appear for and act on behalf of the protesting taxpayer only if the protest states the taxpayer's intention so to appear and clearly identifies the agent.

(c) Any agent who appears for or with a taxpayer at a hearing held pursuant to this section shall not be deemed to be engaged in the practice of any licensed trade or profession by reason of such appearance.

(d) At, or in connection with any hearing held pursuant to this section, the protesting taxpayer shall be entitled to the assistance of an agent and such other persons as he may wish.

Section 4. Tax Court. (a) There is hereby established the state tax court which, for administrative purposes only, shall be in the [state tax agency], but which shall be an independent administrative tribunal. The court shall consist of a chief judge and [four] associate judges, appointed by the governor [with the consent of the state senate] [with the consent of the state legislature]. The term of each judge of the court shall be [six] years. The initial appointments shall be as follows: the chief judge for a term of [six] years; one associate judge for a term of [two] years; one associate judge for a term of [three] years; one associate judge for a term of [four] years; and one associate judge for a term of [five] years. Vacancies on the court shall be filled for the unexpired term in the same manner as appointments to full terms. During his continuance in office neither the chief judge nor an associate judge shall have any other employment, but shall devote full time to his duties as such judge.

(b) Subject only to review by the [state supreme court], the state tax court shall have jurisdiction to determine all appeals from determinations of the [local board of property tax review], the county assessor, and the [head of the state tax agency] relative to protested assessments. The state tax court may affirm, reverse, or modify any determination of the [local board of property tax review], county assessor when acting on a protested assessment, or the [head of the state tax agency] when acting on a protested assessment.

(c) Any taxpayer dissatisfied with the disposition of his protested assessment by the [local board of property tax review], county assessor, or [head of the state tax agency] may appeal therefrom to the state tax court by filing with the court a written notice of appeal and serving on the appropriate county assessor or the [head of the state tax agency], as the case may be, a certified copy of such notice. In order to be valid and effective, any such notice shall be filed and served within [thirty] days of the disposition from which the appeal is to be taken.

(d) Consistent with this act and [cite statutes applicable to proceedings of administrative tribunals], the state tax court shall provide by rule for practice before it and the conduct of its proceedings.

(e) The state tax court may hear and determine all issues of fact and of law de novo, but a determination of a [local board of property tax review], county assessor, or the [head of the state tax agency] shall be affirmed unless contrary to a preponderance of the evidence.

(f) If a protested assessment cannot otherwise be brought into conformity with law, the state tax court may order such adjustments with respect to other assessments of property as are necessary to produce full conformity with law.

(g) Appeals from determinations of the state tax court may be taken to the [state supreme court] only on questions of law. [Provide procedures for appeals to the state supreme court.]

Section 5. Taking of Testimony. (a) Any judge of the state tax court, or any employee of such court, designated in writing for the purpose by the chief judge, may administer oaths, and the court may summon and examine witnesses and require by subpoena the production of any returns, books, papers, documents, correspondence, and other evidence pertinent to the matter under inquiry, at any designated place of hearing, and may authorize the taking of a deposition before any person competent to administer oaths. In the case of a deposition, the testimony shall be reduced to writing by the person taking the deposition or under his direction and the deposition shall then be subscribed by the deponent.

(b) The protesting taxpayer whose assessment is in question and the county assessor or [head of the state tax agency] may obtain an order of the state tax court summoning witnesses or requiring the production of any returns, books, papers, documents, correspondence and other evidence pertinent to the matter under inquiry in the same manner in which witnesses may be summoned and evidence may be required to be produced for the purpose of trials in the [court of appropriate jurisdiction]. Any witness summoned or whose deposition is taken shall receive the same fees and mileage as witnesses in the [court of appropriate jurisdiction].

Section 6. Small Claims. (a) The state tax court shall establish by rule a small claims procedure which, to the greatest extent practicable, shall be informal. The court shall take special care to provide all protesting taxpayers, wherever located within the state, reasonable and convenient access to the court, and shall sit at such times and places as may be appropriate to promote such accessibility.

(b) Any protesting taxpayer who, pursuant to the disposition of his protest by the county assessor, [local board of property tax review], or [head of the state tax agency], would incur a tax liability of less than $[1,000.00] by reason of the protested assessment in the first year to which such assessment applies may elect to employ such procedure to appeal from such disposition, upon payment of a $[2.00] filing fee.

(c) The appellant shall file with the state tax court a written statement of the facts in the case, together with a waiver of the right to appeal to the [state supreme court]. The state tax court shall cause a notice of the appeal and a copy of such statement to be served on the county assessor or [head of the state tax agency] whose assessment is in question. If the sole defense offered is that the property was not overassessed, no further pleadings shall be required.

Section 7. Appeal to [State Supreme Court]. [Use this section to provide procedure for appeal of tax court determinations to state supreme court.]

Section 8. Effect of Assessment Ratio Evidence. (a) Reports of assessment ratios contained in assessment ratio studies of the division shall be conclusive evidence of what the reported ratio is in fact, unless a party to such proceedings establishes that such ratio is not supported by substantial evidence or was derived or established in a manner contrary to law.

(b) In any proceeding relating to a protested assessment it shall be a sufficient defense of such assessment that it is accurate within reasonable limits of practicality; but a proven deviation of ten percent or more from the relevant county assessment ratio shall establish conclusively the invalidity of such defense.

Section 9. Separability. [Insert separability clause.]

Section 10. Effective Date. [Insert effective date.]

15-62-42

REAL ESTATE TRANSFER TAX

More than thirty States, the District of Columbia, and a number of local governments impose a tax on the transfer of real estate. In addition to the revenue produced this tax yields information on real estate prices that can be used in conjunction with assessed values to determine the level and uniformity achieved in assessment administration.

The accompanying suggested legislation is based in part on the West Virginia "Realty Transfer Tax" statute (W. Va. Code, Ch. 11, Art. 22). The suggested draft language includes, in addition to the usual provisions for imposition and collection of the tax, with definitions and exemptions, a provision (Section 4) requiring that a sworn statement of the actual selling price or current market value of the transferred property be attached to each deed presented for recordation. A provision of this kind would strengthen administration of the tax and facilitate the ready availability of sales price data for sales-assessment ratio studies in connection with property tax administration.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act imposing a real estate transfer tax."]

(Be it enacted, etc.)

Section 1. Definitions. **As used in this act:**

(1) "Deed" means [insert the definition applied in the state's law pertaining to real estate].

(2) "Registrar" means [insert title of local official responsible for recording deeds].

(3) "Value" means: (i) in the case of any deed not a gift, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens thereon; and (ii) in the case of a gift, or any deed with nominal consideration or without state consideration, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Section 2. Imposition of Tax. **A tax is imposed at the rate of [$ for each $ of value or fraction thereof] [per centum of the value], which value is declared in the affidavit required by Section 4, upon the privilege of transferring title to real property.**

Section 3. Collection of Tax.

(a) If any deed evidencing a transfer of title subject to the tax herein imposed is offered for recordation, the [Registrar] shall ascertain and compute the amount of the tax due thereon and shall collect such amount as prerequisite to acceptance of the deed for recordation.

(b) The amount of tax shall be computed on the basis of the value of the transferred property as set forth in the affidavit required by Section 4 of this act.

Section 4. Declaration of Value.

(a) Each deed evidencing a transfer of title subject to the tax as herein provided shall have appended thereto an affidavit of the parties to the transaction or their legal representatives declaring the value of the property transferred. If the transfer is not subject to the tax as herein provided, the affidavit shall specify the reasons for the exemption.

(b) The form of affidavit shall be prescribed by the [state tax agency] which shall provide an adequate supply of such forms to each [Registrar] in the state.

(c) The [Registrar] shall transmit two true copies of the affidavit to the [Assessor] who shall insert the most recent assessed value of each parcel of the transferred property on both copies and shall transmit one copy to the [state tax agency].

Section 5. Disposition of Proceeds. [Insert appropriate language as to disposition of proceeds.][1]

Section 6. Powers and Duties of [state tax agency].

(a) The [state tax agency] may prescribe such rules and regulations as reasonably necessary to facilitate and expedite the imposition, collection, and administration of the tax imposed pursuant to this act.

(b) [If not already provided by applicable statutes insert additional subsections conferring such powers and imposing such duties as the [state tax agency] may need to compel the production of taxpayer records, to extend the time for the filing of the declaration of value, and to provide for refunding erroneous payments.]

Section 7. Penalty for Recording Without Tax. Any [Registrar] who willfully shall record any deed upon which a tax is imposed by this act without collecting the proper amount of tax required by this act based on the declared value indicated in the affidavit appended to such deed shall, upon conviction, be fined [fifty dollars ($50)] for each offense.

Section 8. Penalty for Falsifying Value. Any person who shall willfully falsify the value of transferred real estate on the affidavit required by Section 4 of this act shall, upon conviction, be subject to a fine of not more than [$1,000 or to imprisonment of not more than one year, or to both such fine and imprisonment] for each offense.

Section 9. Exemptions. The tax imposed by this act shall not apply to a transfer of title:

(1) recorded prior to the effective date of this act;

(2) to the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(3) solely in order to provide or release security for a debt or obligation;

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[1] Disposition of the proceeds is a matter for state policy determination. Some states will wish to use the entire proceeds for state purposes. Others will wish to share the real estate transfer tax with their local governments; still others will make the entire proceeds available to their local governments.

(4) which confirms or corrects a deed previously recorded;

(5) between husband and wife, or parent and child with only nominal actual consideration therefor;

(6) on sale for delinquent taxes or assessments;

(7) on partition;

(8) pursuant to mergers of corporations;

(9) by a subsidiary corporation to its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of the subsidiary's stock.

Section 10. Effective Date. [Insert effective date.]

15-62-43

CONDITIONAL PROPERTY TAX DEFERMENT FOR NEW COMMUNITY DEVELOPMENT[1]

The financial strain on the developer of a new community is intense in the early years before sales and appreciation of values are sufficient to balance the high initial development costs. One of the large, unavoidable, out-of-pocket costs is the local property tax. Outright exemption of new-community property from local levies could severely strain local budgets when the local government is under the greatest pressure to expand services and facilities. States, with their greater fiscal capability, can assume a helpful role here in furtherance of their basic urbanization policies.

The following suggested state legislation provides that the State reimburse new community developers for local property taxes paid during the initial development stage. This approach would relieve an immediate financial burden and materially assist completion of the project. At a later date, when the developer's investment begins to pay off, the state can recoup its outlays. It should be emphasized that the developer's property tax liabilities to local government are accrued and met, but that his ultimate tax outlay is delayed, with no interest charged, until the beginning of the cash flow from the development.

In return for assistance at a critical period, the State may reasonably require the new community to conform to its urbanization plans and policies and to meet standards which promote the public interest. Among such standards should be the requirement that eligible developers provide low-income housing.

Using state funds to cover local property tax outlays would give states an opportunity to *act,* rather than *react,* as they seek orderly urban growth in accordance with the official state urbanization plans and policies. The investment envisioned here would elicit more than grudging local compliance with state urbanization plans. For the private developer of a new community, it would constitute the state's earnest money in seeing his project completed.

Some states may encounter constitutional prohibitions against this proposal, because, in effect, it calls for lending the credit of the state to the support of private undertakings. Elsewhere in the ACIR State Legislative Program is a proposed Constitutional amendment that permits the state and its political subdivisions to use their credit to encourage private enterprise involvement in urban affairs. In some instances, questions of constitutionality might be avoided by including in the legislation a comprehensive statement of findings and policy to establish the public purpose of this approach.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act temporarily to reimburse developers for local property taxes in a new community."]

(Be it enacted, etc.)

Section 1. Short title. This act shall be known and may be cited as the "New Community Property Tax Financing Act."

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[1] This draft bill incorporates one of the several approaches set forth in the Advisory Commission's report, *Urban and Rural America: Policies for Future Growth,* as measures for the States to consider in implementing policies for urban growth and new community development.

Section 2. Purpose. The purpose of this act is to promote the urban growth policies and the urbanization plan of the state by providing state funds for advances to finance local property taxes on land designated for new community development and to recover such outlays.

Section 3. Definitions. The following terms, whenever used or referred to in this act, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "New community development project" means an area of not less than [1,000] acres under the ownership and management of a new community developer whose expressed purpose is to establish within the area a settlement of at least [15,000] people in accordance with the urbanization plans and policies established pursuant to law.

(2) "New community developer" means any person, partnership, firm, company, or corporation organized for profit who undertakes a new community development project that conforms to the state urbanization plan.

(3) "State urbanization plan" consists of [cite the statutes, official documents, and other instruments which set forth the state's policies and official guidelines for promoting and controlling urban growth].

Section 4. New Community Property Tax Financing Fund. A special account is hereby created in the state treasury to be known as the new community property tax financing fund, to which shall be credited the amount appropriated pursuant to this act, subsequent appropriations made by the [legislature] for this purpose, and other deposits provided for by this act. The sum of [   ] dollars is authorized for establishing the fund. The governor may requisition from the new community property tax financing fund whatever amounts are needed for the payments authorized by this act. If at any time the governor determines that the amount of the fund is greater than the amount needed to carry out the provisions of this act, he may transfer to the general fund of the state treasury whatever amount he finds to be in excess.

Section 5. Application for Optional Payment. A new community developer may apply for a payment from the state in an amount not to exceed the amount of the property tax paid to political subdivisions in which his new community development project is located. The claim shall be filed in the manner prescribed by the director of [the department of community development or office of local affairs]. The application shall contain, but shall not be limited to, the following information:

(1) general description of the project;

(2) legal description of all real estate constituting the project;

(3) plans and other documents required to show the type and general character of the project;

(4) general description of the structures and population contemplated upon completion of the project;

(5) costs and cost estimates of the project;

(6) schedule of the time anticipated for the completion of major segments as well as the entire project; and

(7) evidence of the arrangement made by the developer for financing all costs of the project.

Before authorizing a payment, the director of [department of community development or office of local affairs] shall determine that the project conforms to the state urbanization plan, and that sufficient housing will be provided for low-income families.

Section 7. Period in which Optional Payment may be Claimed. A new community developer may continue to apply for payments from the state in the amount of the property tax to be paid by him to political subdivisions of the state in any subsequent year during a period of [5] consecutive years, if his application for the initial claim is approved, and if he continues to conform to the state urbanization plan and the financial and other criteria set forth in this act.

Section 8. Repayment by the New Community Developer. At a time designated by the new community developer, but no later than [10] years after the initial state payment to the developer, the [appropriate state official] shall request repayment of the amounts paid to the new community developer. If the new community developer does not make prompt repayment at the time and in the amounts due, the entire amount of the payments, together with interest at the rate of [6] percent per annum, shall become due and payable and shall be a liability of the developer to the state to be collected in the same manner that delinquent taxes are collected.

Section 10. Separability. [Insert separability clause.]

Section 11. Effective Date. [Insert effective date.]

15-62-45

FISCAL MEASURES FOR EQUALIZING PROPERTY TAX BURDENS

It is in the public interest that local jurisdictions in metropolitan areas provide their residents and businesses with a reasonably comparable level of basic government services. This is difficult when taxable wealth, income, and business activity as well as the need for governmental services vary drastically among the several jurisdictions comprising the area. It is made doubly difficult when state fiscal policies encourage the proliferation of local governments because the smaller the governmental units the greater the likelihood of wider fiscal disparities among them.

The property tax is the major, and in many cases the sole, source of tax revenue of local governments. In 1967, it accounted for over 87 percent of local tax revenue. The extent to which local units use the property tax is, therefore, a good general index of the pressure of local public service needs and the degree to which the locality is taxing itself to meet those needs.

By confining the tax effort test to the non-educational functions, it is possible to measure more precisely "municipal overburden": requirements on central cities to provide a much broader system of fire, police, health, welfare, and other social services than is necessary for smaller communities. Thus, by eliminating the educational factor, a closer analysis of the municipal overburden factor can be made.

Armed with comparative tax load information, a State can equalize local government property tax loads simply by devising a distribution formula which channels State aid to those districts with the highest effective tax rates, with no expenditure strings attached to the grant. The property tax equalization approach to the disparities problem, if effectively formulated and administered, modifies local fiscal disparities without disturbing local governmental organization and policies since no expenditure strings are attached to the aids.

It is important when considering this approach that the State act first to remove features of its system of grants and shared taxes that tend to encourage local government proliferation, and second, recognize that remaining obstacles to removal of fiscal and service disparities, represented by governmental fragmentation in the metropolitan area, could be perpetuated by the property tax equalization approach. To help meet these problems, paragraph C of section 1 in the suggested legislation limits aid to municipalities of [10,000] or more persons.

Much of the text of the suggested legislation below was drawn from the provisions of Chapter 77, Laws of 1961, State of Wisconsin.

Suggested Legislation

[Title should conform to State requirements. The following is a suggestion:
"An Act To Equalize Property Tax Burdens"]

(Be it enacted, etc.)

Section 1. Tax Sharing Trust Fund. (a) There is hereby established in the Treasury of the State of [insert name of state] a trust fund to be known as the tax-sharing trust fund. The trust fund shall consist of amounts appropriated to the fund as provided in this section.

(b) There is hereby appropriated to the trust fund an amount as determined by the [state finance agency] equal to [2 per centum] of the total state tax revenues collected during the preceding calendar year. The amount appropriated shall be distributed on [insert date] of each year by the [state finance agency] to all eligible political subdivisions in allocable shares as certified by the [state tax agency] pursuant to subsection (c) of this section.

(c) Participation in the allocation under this act shall be limited to [municipalities] with populations in excess of [10,000] persons and having an average computed full value rate [1.5] times the average computed full value rate for non-school purposes for all jurisdictions. The excess of the average computed full value rate over this amount of each participating municipality shall be multiplied by the municipality's full value of all taxable property for the preceding year, as equalized for state tax purposes pursuant to section 3. The allocable share of each participating municipality in the distribution shall be in the same proportion as the amount determined hereunder for each municipality bears to the total amount, thus determined, of all participating municipalities.

Section 2. Tax Credit. On or before [insert date] of the year preceding each distribution, the [state tax agency] shall notify the [clerk] of each eligible political subdivision of the amount to be distributed to it the following [insert date]. The anticipated receipt of the distribution shall not be taken into consideration in determining the tax rate of the municipality but shall be applied as tax credits, as follows:

(1) Every property taxpayer of the municipality having assessed property, shall receive a tax credit in an amount determined by applying the percentage of the amount of the value of property, assessed to him to the amount of the distribution to be made to the municipality as stated in the notification from the [state tax agency].

(2) The amount of the tax credit of particular property taxpayers, as determined under paragraph (1) shall be set forth on the tax bills of taxpayers issued immediately following the notification referred to in this subsection and shall serve to reduce the property taxes otherwise payable.

Section 3. Definitions. (a) "Computed full value rate" means the sum total of all general property taxes (including state, county, local and school taxes), levied and extended by [a town, village or city] as reported to the [state tax agency] in its abstract of assessments and taxes, divided by the full value of taxable property in the municipality as equalized for state purposes, and the quotient expressed in mills per dollar of valuation, county [municipal] [income] and [sales] tax revenues at their millage equivalents.

(b) On or before [insert date] and annually thereafter, the [state finance agency] shall remit to [the treasurers] of each eligible [political subdivision] an amount as certified to the [state finance agency] by the [state tax agency] pursuant to section 1, paragraph (c).

Section 4. Certification. On or before [insert date] and annually thereafter, the [state tax agency] shall certify to the [state finance agency] the amount to be remitted to the treasurers of each eligible political subdivision. If the local clerk fails to meet the deadline and as a result the [state tax agency] cannot meet the [insert date] roll certification requirement by this subsection it may prepare additional certification rolls within the period of time provided for the correction of errors.

Section 5. Property Tax Credit. The amount of the tax credit of particular property taxpayers, shall be set forth on the tax bills of taxpayers issued immediately following the notification referred to in section (2) and shall serve to reduce the property taxes otherwise payable.

Section 6. Overpayment of Property Tax Credit. When an eligible political subdivision has received an overpayment of tax credit, the excess shall be a direct claim by the state against the political subdivision and if not paid on demand it shall be certified as a special charge in the next following [secretary of state's] apportionment of state taxes and charges.

Section 7. Underpayment of Property Tax Credit. When a political subdivision has received an underpayment of tax credit as a result of a palpable error or misclassification, the [state tax agency] shall prepare additional certification rolls to correct errors of misclassification. If [insert date] falls on a Saturday or Sunday, the next secular or business day shall be the final date. Any correction claim which is delivered to the department by U.S. mail shall be considered timely filed if the envelope in which it is mailed is properly addressed with postage fully prepaid which envelope is postmarked before midnight of the final date, provided the claim is actually received in the office of the department within 5 days of the final date.

Section 8. Payment of Credit to Taxpayer. When a taxpayer is under-credited with a tax credit, the [treasurer] shall pay the taxpayer for the shortage in credit if the tax has been paid in full. If the tax has not been paid in full the [clerk] shall issue an order check to the [treasurer] then in possession of the tax roll who shall apply the amount as payment on the taxes due. The next certification shall be reduced by the clerk for payments or credits and the balance then remaining shall be distributed.

Section 9. Omitted Property. Property entitled to credit under this act but omitted from the assessment roll shall be taxed at the rate prevailing in the year of omission but shall receive the same credit as other like property receives in the year in which it is placed on the tax roll.

15-62-48

PROPERTY TAX RELIEF FOR LOW-INCOME FAMILIES

The property tax can quickly create a disproportionate claim on a family's financial resources once retirement, the death or physical disability of the bread-winner, or unemployment reduces sharply the flow of income. Local governments as a rule have neither the legal authority nor the fiscal capacity to alleviate these potential property tax over-burden situations, but States have both. Wisconsin, Minnesota and Vermont have developed an efficient tax relief mechanism designed to avoid the special hardships frequently experienced by low-income property-owners. Low-income, elderly homeowners and renters in these states either claim a credit against their State income tax liability or, if the credit exceeds their income tax liability, receive a rebate from the State for that portion of their property tax liability deemed by the legislature to be excessive in relation to their household income.

In a number of States, homestead exemption, a durable by-product of the 1930's depression, offers some protection from undue property tax burdens on low-income occupants of dwellings and farms. This method, however, bestows property tax relief to all homeowners, not just those with low incomes, and misses completely the low-income families in rented properties. The policy of granting homestead exemptions involves a substantial amount of injustice among individual taxpayers and taxing jurisdictions at a large and usually unwarranted sacrifice of local property tax revenue.[1] If the exemption privilege is restricted to low income households and the State reimburses local governments for the cost of this program, the more obvious defects of the exemption approach could be minimized. It is not, however, flexible enough to alleviate extraordinary property tax burdens that may be experienced indirectly by low income households in rented quarters.

To the extent that landlords can shift the property tax to tenants, low income households in rented quarters also feel the pinch of extraordinary property tax burdens in relation to current income. Minnesota, Vermont and Wisconsin have recognized this by establishing a percentage of gross rent as rent constituting property taxes accrued. This percentage serves as the property tax equivalent which renters may use in claiming income tax credit or rebate.

As a means of preventing fiscal overburdens, the tax credit-tax rebate technique has unique advantages. Because this tax relief program is financed from State funds and administered by a State agency, it neither erodes the local tax base nor interferes in any way with the local assessment or rate-setting processes. It can be designed to maximize the amount of aid extended to low-income homeowners and renters while minimizing loss of revenue. It operates in the "right" direction from both inter-jurisdictional and inter-personal standpoints; because the poor tend to be clustered toegther, the major portion of the relief will redound to the benefit of low-income households and low-income communities.

The suggested legislation contains three alternative methods of determining an extraordinary property tax burden. One alternative uses the Vermont method of defining the extraordinary burden as the amount in excess of a specified percentage of household income. A second alternative uses the Minnesota method where the extraordinary burden is defined as a specified percentage (depending upon income size) times the property tax paid. A third alternative is designed to reflect differences in extraordinary burdens that stem from variations in size of family. Under this alternative, the claimant's extraordinary burden is the amount that exceeds a specified number times the liability the claimant would have if he calculated his State personal income tax liability using total household income as defined in this bill less personal and dependents allowances provided in the State income tax law. Two States specify $300 as the maximum amount of the property taxes or rent constituting property taxes that can be used in claiming the credit.

[1] Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax* (Washington, D.C., 1963).

For purposes of this legislation, income means not only income as defined for income tax purposes but also social security, pension and annuity payments, nontaxable interest, workman's compensation, and the gross payment of "loss of time" insurance. To protect the State against "doubling-up" on the charge against public funds, any person who is a recipient of public funds for the payment of taxes or rent during the period for which the claim is filed may not claim tax relief under the act.

The following suggested legislation is patterned after the Wisconsin, Minnesota, and Vermont statutes. Language has been included (alternative Section 5) that would provide an outright rebate to those who qualify in States without a personal income tax that desire to grant this type of relief.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to Reimburse Low-Income Householders for Extraordinary Property Tax Burdens.]

(Be it enacted, etc.)

Section 1. Short Title. **This act may be cited as the "Extraordinary Tax Relief Act."**

Section 2. Purpose. **The purpose of this act is to provide relief, through a system of income tax credits and refunds and appropriations from the general fund, to certain persons who own or rent their homestead.**

Section 3. Definitions. **As used in this act:**

(1) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code of the United States, the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance and relief (not including relief granted under this act), the gross amount of any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act, State unemployment insurance laws, and veterans disability pensions), nontaxable interest received from the Federal Government or any of its instrumentalities, workman's compensation, and the gross amount of "loss of time" insurance. It does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency.

(2) "Household" means a claimant and spouse.

(3) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(4) "Homestead" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multi-dwelling or multi-purpose building and a part of the land upon which it is built. ("Owned" includes a vendee in possession under a land contract and of one or more joint

tenants or tenants in common.) It does not include personal property such as furniture, furnishings or appliances, but a mobile home may be a homestead.

(5) "Claimant" means a person who has filed a claim under this act and was domiciled in this state during the entire calendar year preceding the year in which he files claim for relief under this act. In the case of claim for rent constituting property taxes accrued, the claimant shall have rented property during the entire preceding calendar year in which he files for relief under this act and shall have occupied the same residence quarters for at least six months of the preceding calendar year. When two individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the [tax commissioner] and his decision shall be final. If a homestead is occupied by two or more individuals, and more than one individual is able to qualify as a claimant, and some or all the qualified individuals are not related, the individuals may determine among them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the [tax commissioner], and his decision shall be final. If a homestead is occupied by two or more individuals, and more than one individual is able to qualify as a claimant, and some or all the qualified individuals are not related, the individuals may determine among them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the [tax commissioner], and his decision shall be final.

(6) "Rent constituting property taxes accrued" means [20 or 25][1] percent of the gross rent actually paid in cash or its equivalent in any calendar year by a claimant and his household solely for the right of occupancy of their (name of state) homestead in the calendar year, and which rent constitutes the basis, in the succeeding calendar year, of a claim for relief under this act by the claimant.

(7) "Gross rent" means rental paid solely for the right of occupancy (at arms-length) of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as a part of the rental agreement, whether or not expressly set out in the rental agreement. If the landlord and tenant have not dealt with each other at arms-length, and the [tax commissioner] is satisfied that the gross rent charged was excessive, he may adjust the gross rent to a reasonable amount for purposes of this act.

(8) "Property taxes accrued" means property taxes (exclusive of special assessments, delinquent interest, and charges for service) levied on a claimant's homestead in this State in [calendar year] or any calendar year thereafter. If a homestead is owned by two or more persons or entitites as joint tenants or tenants in common, and one or more persons or entities are not a member of claimant's household, "property taxes accrued" is that part of property taxes levied on the homestead which reflects the ownership percentage of the claimant and his household. For purposes of this paragraph

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[1] Twenty percent used in Minnesota and Vermont; 25 percent in Wisconsin.

property taxes are "levied" when the tax roll is delivered to the local [treasurer] for collection. If a claimant and spouse own their homestead part of the preceding calendar year and rent it or a different homestead for part of the same year, "property taxes accrued" means only taxes levied on the homestead when both owned and occupied by the claimant at the time of the levy, multiplied by the percentage of 12 months that such property was owned and occupied by the household as its homestead during the preceding year. When a household owns and occupies two or more different homesteads in this State in the same calendar year, property taxes accrued shall relate only to that property occupied by the household as a homestead on the levy date. If a homestead is an integral part of a larger unit such as a farm, or a multi-purpose or multi-dwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the homestead is of the total value. For purposes of this paragraph "unit" refers to the parcel of property covered by a single tax statement of which the homestead is a part.

Section 4. Claim is Personal. The right to file claim under this act shall be personal to the claimant and shall not survive his death, but such right may be exercised on behalf of a claimant by his legal guardian or attorney-in-fact. If a claimant dies after having filed a timely claim, the amount thereof shall be disbursed to another member of the household as determined by the [tax commissioner]. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if neither is appointed and qualified within 2 years of the filing of the claim, the amount of the claim shall escheat to the state.

Section 5. Claim as Income Tax Credit or Rebate. Subject to the limitations provided in this act, a claimant may claim in any year as a credit against [name of State] income taxes otherwise due on his income, property taxes accrued, or rent constituting property taxes accrued, or both in the preceding calendar year. If the allowable amount of such claim exceeds the income taxes otherwise due on claimant's income, or if there are no [state] income taxes due on claimant's income, the amount of the claim not used as an offset against income taxes, after audit [or certification] by the [tax commissioner], shall be paid to claimant from balances retained by the [treasurer] for general purposes. No interest shall be allowed on any payment made to a claimant pursuant to this act.[1]

[Alternative Section 5 for States not imposing a personal income tax. *Claim as Rebate From State Funds.* Subject to the limitations provided in this act, a claimant may claim in any year a rebate for property taxes accrued or rent constituting property taxes accrued or both in the preceding year. The amount of the rebate, after audit or certification by the [tax commissioner] shall be paid to claimant from balances retained by the [treasurer] for general purposes.]

Section 6. Filing Date. No claim with respect to property taxes accrued or with respect to rent constituting property taxes accrued shall be paid or allowed, unless the claim is actually filed with and in the possession of the [tax department] on or before [date for filing initial claim]. Subject to the same conditions and limitations, claims may be filed on or before (income tax filing date or other specified date) with respect to property taxes accrued of the next preceding calendar year.

Section 7. Satisfaction of Outstanding Tax Liabilities. The amount of any claim otherwise payable under this act may be applied by the [tax department] against any liability outstanding on the books of the department against the claimant, or against his or her spouse who was a member of the claimant's household in the year to which the claim relates.

Section 8. One Claim Per Household. Only one claimant per household per year shall be entitled to relief under this act.

Section 9. Computation of Credit. The amount of any claim made pursuant to this act shall be determined as follows:

(1) (based on Vermont statute) For any taxable year, a claimant shall be entitled to a credit against his tax liability equal to the amount by which the property taxes or rent constituting property taxes upon the claimant's homestead for the taxable year exceeds [7] percent of the claimant's total household income for that taxable year.

OR

(1) (based on Minnesota statute) For any taxable year, a claimant shall be entitled to credit in accordance with the following schedule:

Income Range	*Percent of Property Taxes*
0 – 499	(75) percent
500 – 999	(70) percent
1,000 – 1,499	(50) percent
1,500 – 1,999	(40) percent
2,000 – 2,499	(30) percent
2,500 – 2,999	(20) percent
3,000 – 3,499	(10) percent

OR

(1) (To reflect family size) For any taxable year, a claimant shall be entitled to a credit against his State personal income tax liability equal to the amount by which property taxes or rent constituting property taxes upon the claimant's homestead for the taxable year is in excess of [2] times the amount of the claimant's "recomputed State personal income tax liability." "Recomputed State personal income tax liability" for purposes of this act means the amount obtained by applying the appropriate

State income tax rates to the result obtained by subtracting the claimant's personal exemption and dependent allowances as set forth in the State personal income tax statute from the claimant's total household income as defined in Section 3.

(2) In any case in which property taxes accrued, or rent constituting property taxes accrued, or both, in any one year in respect of any household exceeds [\$300[1]], the amount thereof shall, for purposes of this act, be deemed to have been [\$300[1]].

(3) The [tax commissioner] shall prepare a table under which claims under this act shall be determined. The table shall be published in the department's official rules and shall be placed on the appropriate tax blanks. The amount of claim as shown in the table for each bracket shall be computed only to the nearest 10 cents.

(4) The claimant, at his election, shall not be required to record on his claim the amount claimed by him. The claim allowable to persons making this election shall be computed by the department, which shall notify the claimant by mail of the amount of his allowable claim.]

Section 10. Administration. The [tax commissioner] shall make available suitable forms with instructions for claimants, including a form which may be included with or as part of the individual income tax blank. The claim shall be in such form as the [tax commissioner] may prescribe.

Section 11. Proof of Claim. Every claimant under this act shall supply to the [department of taxation], in support of his claim, reasonable proof of rent paid, name and address of owner or managing agent of property rented, property taxes accrued, changes of homestead, household membership, household income, size and nature of property claimed as the homestead and a statement that the property taxes accrued and used for purposes of this act have been or will be paid by him and that there are no delinquent property taxes on the homestead.

Section 12. Audit of Claim. If on the audit of any claim filed under this act the [tax commissioner determines the amount to have been incorrectly determined, he shall redetermine the claim and notify the claimant of the redetermination and his reasons for it. The redetermination shall be final unless appealed within 30 days of notice.

Section 13. Denial of Claim. If it is determined that a claim is excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment (as income taxes are assessed), and the assessment shall bear interest from the date of payment or credit of the claim, until refunded or paid, at the rate of one percent per month. The claimant in such case, and any person who assisted in the preparation or filing of such excessive claim or supplied information upon which such excessive claim was prepared, with fraudulent intent, is guilty of a misdemeanor. If it is determined that a claim is excessive and was negligently prepared, 10 percent of the corrected claim shall be disallowed, and if the claim has been paid or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment (as income taxes are assessed), and the assessment shall bear interest at one percent per month from the date of payment until refunded or paid.

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[1] \$600 in Minnesota.

Section 14. Rental Determination. If a homestead is rented by a person from another person under circumstances deemed by the [tax commission] to be not at arms-length, he may determine rent constituting property taxes accrued as at arms-length, and, for purposes of this act, such determination shall be final.

Section 15. Appeals. Any person aggrieved by the denial in whole or in part of relief claimed under this act, except when the denial is based upon late filing of claim for relief [or is based upon a redetermination of rent constituting property taxes accrued as at arms-length] may appeal the denial to the [appropriate state agency] by filing a petition within 30 days after such denial.

Section 16. Public Welfare Recipients Excluded. No claim for relief under this act shall be allowed to any person who is a recipient of public funds for the payment of the taxes or rent during the period for which the claim is filed.

Section 17. Disallowance of Certain Claims. A claim shall be disallowed, if the department finds that the claimant received title to his homestead primarily for the purpose of receiving benefits under this act.

Section 18. Extension of Time for Filing Claims. In case of sickness, absence, or other disability, or if, in his judgement, good cause exists, the [tax commissioner] may extend for a period not to exceed six months the time for filing a claim.

Section 19. Separability [Insert separability clause].

Section 20. Effective date. [Insert effective date].

15-62-49

PROPERTY TAX RELIEF ON BUSINESS INVENTORIES AND REIMBURSEMENT TO LOCAL GOVERNMENTS

There are substantial reasons for abolishing the tax on tangible personal property in any state that can possibly raise revenue in another way. This tax is particularly difficult to administer; and when adequately administered, it is a poor means of measuring either the benefit to or the ability of an individual or business firm. On both these grounds, no other tax is as roundly condemned as this levy.

The concern for a favorable tax image has prompted a number of states to initiate business tax reform to maximize taxpayer certainty and evenhanded treatment, and to minimize those features of the tax system that are particularly discriminatory in character. De-emphasizing the personal property tax, especially on business inventories, is perhaps the most significant step states can take to improve both their business tax climate and their business tax structure. The major obstacle to outright repeal of the personal property tax on business is most frequently lack of available replacement revenue for local governments critically dependent upon property tax receipts.

In recent years Connecticut, Wisconsin, Michigan, Oregon, Arizona, Florida, and Ohio have all reduced the local tax on business personalty. When confronted with this issue of revenue replacement, the Oregon state legislature provided for a gradual scaling down of assessments on tangible personal property. The revenue loss to local governments is met from state revenue sources. Wisconsin earmarked a part of the revenue of a new sales tax for this same replacement purpose. New Jersey solved the local revenue replacement problem by reimbursing local governments from revenue derived from raising the state corporation income tax rate and by the enactment of state taxes on machinery and gross receipts. The substitution of other taxes for the highly discriminatory local tax on business personalty is justified not only on equity grounds but also on the basis of improving a state's business tax climate.

The suggested legislation below is based largely on the New Jersey statute.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Repeal of Tax. **[Sections (identify those sections of the state law pertaining to the tax on business inventories) of the state property tax code are hereby repealed.]**

Section 2. Replacement of Revenue. **The taxes received from the following: [insert business taxes that are to be distributed to political subdivisions] shall be for the benefit of the [insert appropriate political subdivisions] of the state, in replacement of revenues derived by such [insert appropriate political subdivisions] from local taxation of [business inventories] as repealed in section 1 of this act.**

Section 3. Certification by [state tax agency]. **The [state tax agency] shall determine the greatest amount received by each [appropriate political subdivisions] from the local levy upon [business inventories] for the three years prior to the repeal of the tax, and shall on or before [insert date]**

certify to the [state treasurer] the amounts so determined for each [appropriate political subdivisions] and the total amount for all [appropriate political subdivisions].[1]

Section 4. Additional Certification by [state tax agency]. The [state tax agency] shall, on or before [insert date] and on or before [insert date] annually thereafter, determine from the information then available the total amount of revenue (1) that will be raised during the 12-month period ending on or before [insert date] of that calendar year from the taxes set forth in section 2 of this act and (2) that will be available by way of appropriation for the purposes of this act, and shall certify this amount to the [state treasurer].

The [state tax agency] shall, on or before [insert date] and on or before [insert date] annually thereafter, certify to the [state treasurer] any changes or adjustments in the certification filed earlier in the year.

Section 5. Allocation of Revenue to [appropriate political subdivisions]. If the amount determined by the [state tax agency] in section 4 hereof shall exceed the amount determined by the [state tax agency] in section 3 hereof, the [state tax agency] shall allocate the excess amount among the [appropriate political subdivisions] of this state in accordance with the following formula:

There shall be allocated to each [appropriate political subdivisions] an amount as will be in the same ratio to the excess amount, as the local property tax levied in the municipality in the preceding calendar year upon commercial, industrial, and farm real estate (excluding railroad property) is to the total taxes levied upon the property in all [appropriate political subdivisions] in the state in the same year.

The [state tax agency] shall total the amounts allocated to each [appropriate political subdivisions] under the provisions of this section and shall certify this amount to the [state treasurer] on or before [insert date] and on or before [insert date] annually thereafter.

Section 6. Payment by State Treasurer. The [state treasurer] annually, on or before the date set forth in section 7 of this act, upon the certification of the [state tax agency] and upon the warrant of the [state comptroller] shall pay and distribute to each [appropriate political subdivisions] the amount determined in accordance with the provisions of section 3 and 5 of this act:

(1) from the moneys collected from the taxes described in section 2 of this act; and

(2) from such other funds as shall be appropriated by law for this purpose.

Section 7. Distribution Dates. The distribution required to be made by the [state treasurer] under this act shall be made as follows: the first installment shall be payable annually on [insert date] commencing on [insert date] and shall consist of 1/2 of the amount certified under section 3

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[1] In those states where exemption of personal property was optional the state may choose to distribute funds on a per capita basis.

hereof; and the second installment shall be payable on the succeeding [insert date] of each year and shall consist of the balance of the amount certified under section 3 hereof plus the [appropriate political subdivision's] distributive share of the excess, if any, allocated under section 5 hereof.

Section 8. County Equalization Tables. **For the purpose of apportioning the amounts to be raised in the respective taxing districts of the county, the [county board of taxation] shall, for each taxing district, include in the equalization table for the county the assumed assessed value of the property represented by the money received by each taxing district pursuant to the provisions of this act.**

Commencing with the tax year [insert date] and thereafter, the assumed assessed value of such property in each taxing district shall be determined by the [county board of taxation] in the following manner: (a) the amount of money received by each taxing district during the preceding tax year pursuant to the provisions of this act, shall be divided by the general tax rate of the taxing district for such preceding tax year to obtain an assumed assessed value of such property; (b) this assumed assessed value shall be divided by the fraction produced by dividing the aggregate assessed value by the aggregate true value of the real property, exclusive of [centrally assessed property] in the taxing district; and (c) the resulting quotient shall be included in the net valuation of each taxing district on which county taxes are apportioned.

Section 9. Appeals. **When considering an appeal or review taken by any person or [appropriate political subdivisions] with respect to any of the provisions of this act, the [review court] shall not try or determine the case de novo except in the case of an arithmetical or typographical error in the calculation of the distribution, but the facts shall be considered and determined exclusively upon the record filed with the court. A finding, decision, or determination of the [state tax agency] shall not be set aside or disturbed if it complies with the procedural requirements of this act and is supported by substantial, reliable, and probative evidence.**

Section 10. Powers of [state tax agency]. **(a) The [state tax agency] is authorized to make any rules and regulations, and to require any facts and information from local tax assessors, [county boards of taxation] and agencies of the state government as he may deem necessary to carry out the provisions of this act.**

(b) The [state tax agency] may delegate to any officer or employee of the [state tax agency] any powers as necessary to carry out efficiently the provisions of this act, and the person or persons to whom such power has been delegated shall possess and may exercise all of the powers and perform all of the duties herein conferred and imposed upon the [state tax agency].

Section 11. Separability. **[Insert separability clause.]**

Section 12. Effective Date. **[Insert effective date.]**

STATE FINANCING OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

State assumption of primary responsibility for public elementary and secondary school financing stands out as one practical way to achieve substantial parity of resources behind each pupil. As long as local school districts have wide latitude in setting their own tax levels, great variations in both wealth and willingness to tax will produce significant differences in the amount of resources behind each student and consequent differences in the quality of education itself.

Increasingly, the cost and economic consequences of high quality and low quality education are felt well beyond the boundaries of the local school district. No student should be denied an adequate educational opportunity because of the accidents of local property tax geography.

Equality of educational opportunity is of critical importance in a democratic society dedicated to the proposition that all persons should have an equal chance to develop their potentialities to the fullest. This objective takes on a particular urgency as technological advancement causes employment opportunities to become increasingly restricted to persons with professional and technical skills.

Heavy reliance on the property tax for local school support can contribute to severe fiscal tensions in the intergovernmental financing system. Since 1942, local schools have increased their share of receipts from local property taxes from less than one-third to slightly more than one-half of all local property tax revenue. Local non-educational functions have become inferior claimants in the competition for the local property tax base. Counties and cities have been constrained from adequate use of the local property tax through heavy use of the tax by school boards. An increasingly skewed system of financing has developed, one in which costs for a major function of widespread benefit are largely localized.

This suggested legislation would relieve local property taxpayers of substantially all of the burden of underwriting the cost of education. Several States, including North Carolina and Delaware, have approached the goal of complete State assumption of financial responsibility. Hawaii has assumed complete financial and administrative responsibility for local public schools.

Budgetary considerations may dictate a somewhat gradual rather than an immediate substitution of State tax dollars for local property tax receipts. However, there is evidence to suggest that perhaps as many as 20 or more States could assume responsibility for substantially all public school financing if they made as intensive use of personal income and sales taxes as the "heavy-user States" now make on the average. When viewed alongside the potential decrease in the local property tax, State assumption of financial responsibility loses its idealistic cast and takes on the appearance of a realistic and equitable readjustment of the total tax burden.

This legislation restricts the amount of local supplementation to not more than 10% of the State outlay for local schools. Failure to do this would undermine the objectives of creating a fiscal environment more conducive to equal educational opportunity and of making more of the property tax base available to finance the general functions of local government.

16-12-00

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to Provide for the Financial Support of Public Elementary and Secondary Schools."]

(Be it enacted, etc.)

Section 1. Purpose. The purposes of this act are: to achieve high quality elementary and secondary educational programs for all children in this state; to assure substantial parity in the financial support of public elementary and secondary schools, while taking due account of the differences among pupils in their educational needs; and to relieve the local property tax base of substantially all of the financial burden of elementary and secondary education, thereby releasing local property tax resources for the support of other local public services. To accomplish these purposes the legislature declares it to be a responsibility of the state to provide substantially all the financial support for public elementary and secondary schools, with appropriate educational policy-making authority to be exercised by local school [districts] as provided by law.

Section 2. State School Support Plan. (a) The [chief state school officer] shall prepare a State School Support Plan for inclusion in the [annual] budget submitted by the Governor to the Legislature. The State School Support Plan shall include:

(1) Information required to determine an adequate level of State financial support for public elementary and secondary education for each local school [district]; and

(2) Amounts of State funds recommended to be allocated to each public school [district] to implement an elementary and secondary educational program that meets all requirements of State law.

(b) In developing the State School Support Plan, the [chief state school officer] shall identify and estimate for each public school [district] (1) the cost of providing elementary and secondary educational services and facilities, including special educational services and facilities and the number and kinds of instructional and other personnel; and (2) the cost of acquiring and maintaining land, buildings and equipment, including transportation equipment. In determining the cost of special educational services, the [chief state school officer] shall take into consideration such factors as:

(1) The number of pupils falling below minimum educational competence as established by standardized tests;

(2) The number of children under [19] not attending school who have not completed twelve grades; and

(3) The number of children[1] counted in determining a grant from the Federal government under Title I of Public Law 89-10, 20 U.S.C.A. 241c, as amended.

Section 3. School [Districts] to Provide Information. **Upon request of the [chief state school officer], the [superintendent] of each public elementary and secondary school [district] shall provide any information, including financial records, which the [chief state school officer] requires for the development of the State School Support Plan.**

Section 4. Payments to School [Districts]. **The funds provided by the state for the support of public elementary and secondary education shall be allocated by the [chief state school officer] to the several public elementary and secondary school [districts] of the state in a manner that will carry out as nearly as may be the State School Support Plan. The [chief state school officer] shall notify the [state disbursing officer] of the amounts allocated to each local [district] and shall notify the [superintendent] of each local district of the amount allocated to it. The [state disbursing officer] shall make [quarterly] payments to the [districts] of the amounts so allocated.**

Section 5. Local Levies for School Purposes. **In addition to the amount allocated pursuant to section 4, any public elementary and secondary school [district] may spend for school purposes, from the levy and collection of taxes and charges authorized by law to be imposed in the jurisdiction, an amount not to exceed [10] percent of the amount so allocated.**

Section 6. Repeal of Conflicting Acts or Sections of Acts. **[Insert repealing clause.]**

Section 7. Separability. **[Insert separability provision.]**

Section 8. Effective date. **[Insert effective date.]**

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[1] From low income families and from families receiving payments under the state program of aid to families with dependent children.

16-14-00

AN EQUALIZING STATE FOUNDATION PROGRAM FOR HEALTH AND HOSPITALS

The financial practices of State governments in providing public health and hospital services reveal that – with few exceptions – those States using intergovernmental transfers take no cognizance of the variations in local fiscal capacity. Equalization provisions would help to aim this State financial assistance predominantly at those jurisdictions where needs are greatest in relation to resources. At the same time, differences in local tax rates to finance comparable programs would be minimized.

Greater equalization would help the poorest areas of a State to provide more adequate personnel and facilities. Where public health and hospital facilities currently are financed from State as well as local resources, explicit recognition of variations in local fiscal capacity would provide more comparable facilities throughout the State without requiring disproportionate tax efforts in poorer jurisdictions.

The following suggested State legislation takes a minimum foundation approach to the support of public health and hospital facilities. It requires a minimum local contribution beyond which the State will "fill in" the sums necessary to maintain an adequate public health and hospital program. The bill bases the local contribution on a specified percentage of the property tax base, but leaves to the option of the local government whether to impose such a property tax levy or to obtain the funds from such other local revenue sources as may be legally available.

The draft bill (section 4) lists a number of services that may be included in a comprehensive local health program. Some states may wish to exclude services relating to mental illness, narcotic addiction and drug abuse, or alcoholism, where these are separate programs administered independently of the general health program.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act Providing for an Equalizing State Minimum Foundation Support Program for Comprehensive Community Health Services and Facilities."]

(Be it enacted, etc.)

Section 1. Purpose. **It is the purpose of this act to provide state financial support for a joint state-local comprehensive community health program on an equalizing basis that takes into account both the relative need and the fiscal capacity of each [appropriate local government]. The legislature finds that equalized assessed valuation of property is a suitable basis for determining local fiscal capacity and that needs for health services and facilities can best be determined by the state [health department] on the basis of a continuing statewide survey and analysis of state and local health programs.**

Section 2. Local Public Health Support Plan. **On the basis of surveys and analyses of local general public health and hospital needs, the state [health department] shall prepare a Local Public**

Health Support Plan for inclusion in the budget submitted by the Governor to the legislature. The plan shall set forth the requirements of an adequate public health and hospital program for each [appropriate local government] and shall recommend the amount of state funds to be allocated to each [appropriate local government] which, when added to [ ] percent of the equalized assessed valuation of property subject to taxation in the local jurisdiction, will provide the amount required for an adequate local public health program. The Local Public Health Support Plan shall include, but shall not be limited to, the following services:

(1) Public health administration and research laboratories, education, statistics, nursing and other general health activities;

(2) Categorical health programs such as control of cancer, tuberculosis, mental illness and maternal and child health;

(3) Environmental health programs such as inspections of water supply, food handling establishments, health examinations of individuals, sanitary engineering, water pollution control, and other activities for eliminating or abating health hazards;

(4) Immunization, treatment clinics, crippled children's services, and school health services;

(5) Medical vendor payments not identified with public assistance programs;

(6) Establishment and operation of hospital facilities and institutions for care and treatment of the handicapped, provision of hospital care, and support of other public or private hospitals;

(7) Narcotic addict clinics and rehabilitation facilities;

(8) Alcoholism prevention, treatment and control; and

(9) [Other specified public health services].

Section 3. Local Units to Provide Information. Upon request of the [commissioner] of the state [health department], the [chief executive officer] of each [appropriate local government] shall provide any information, including financial records, which the [commissioner] requires for the development of the Local Public Health Support Plan.

Section 4. Local Budget to be Submitted. [Sixty] days prior to the time budgets are finally adopted, the [local governing body] in each local government shall submit a proposed public health and hospital program budget to the state [health department]. The [commissioner] shall consider the proposed budget and return it with his recommendations to the [local governing body] within [thirty] days. If the [local governing body] fails to change its proposed budget to incorporate the recommendations in the budget as finally adopted, the [commissioner], after affording the [local governing body] an opportunity to be heard, may withhold from that local government all or any part of the funds appropriated by the legislature to carry out the provisions of this act.

Section 5. Local Appropriations. Each [appropriate local government] shall budget and appropriate sufficient money to provide a comprehensive program of community health services as specified in the Local Public Health Support Plan; provided, however, that no [appropriate local government] shall be required by the provisions of this act to appropriate for this purpose more than the sum of the payments allocated from funds appropriated by the legislature for the purposes of this act plus [ ] percent of the equalized assessed valuation of taxable property.

Section 6. Basis for Payments. From funds provided by the legislature, the [commissioner] of the state [health department] shall authorize payments to be made to each [appropriate local government] to carry out as nearly as may be the Local Public Health Support Plan. The [commissioner] shall notify the [state disbursing officer] of the amounts allocated to each [appropriate local government] and shall notify the [appropriate officer] of each local government of the amount allocated to it. The [state disbursing officer] shall make [quarterly] payments to the local governments of the amounts so allocated.

Section 7. Annual Evaluation of Costs; Reduction of State Aid.

The [commissioner] of the state [health department] shall review annually each local health and hospital program in the state to determine if the costs are in excess of what is reasonably necessary to maintain in an efficient manner an adequate general public health program. If the [commissioner] finds that costs are excessive in any [appropriate local government] receiving funds pursuant to section 5 of this act, he shall notify the [local governing body] of his fundings and recommendations for reducing costs and, after [thirty] days' notice, shall conduct a public hearing in the locality on his findings and recommendations. Upon completion of the hearing, the [commissioner] may set a reasonable period of time, not to exceed [one year], for the [local governing body] to comply with his recommendations for reducing costs. If at the end of the designated period of time the [local governing body] has failed to comply, the [commissioner] from that time on shall allow to that local government only the amount of money from state funds that would have been the amount allowed if the recommendations had been effected. The [Commissioner] shall report to the Governor and the legislature his findings and recommendations, the results of public hearings, and the amount of state funds withheld from any [appropriate local government] pursuant to this section.

Section 8. Local Supplements. Any [appropriate local government], with the use of its own funds, may provide other local health services in addition to those supported by state funds, and may supplement the health services supported by state funds.

Section 9. Separability. [Insert separability clause].

Section 10. Effective Date. [Insert effective date].

16-15-00

DISTRIBUTION OF STATE HIGHWAY-USER REVENUES TO LOCAL GOVERNMENTS

Although transportation needs have changed drastically as population has concentrated in the urban areas, most state formulas for distributing highway-user revenues to local governments date from an earlier era and many of them favor the rural areas.

Urban communities are faced with an ever-growing traffic volume and with increasing construction and maintenance costs in order to keep this traffic flowing—costs which generally have not been taken into account in formulas under which state highway-user funds are now allocated. To correct the imbalance between rural and urban highway aid, the following draft legislation includes an allocation formula that reflects fiscal capacity and actual needs as measured by such factors as population, commuter patterns and expenditure requirements.

The draft legislation also recognizes the need to allow more flexibility in the use of highway-user funds—particularly in urban areas. To this end it authorizes localities to use such funds for mass transportation facilities, in addition to their traditional use for roads and streets.

Because of the interstate variation in the allocation of street and road responsibility between counties and municipalities (and in some states, townships), no attempt is made here to spell out the coverage of the terms "county roads" and "municipal streets." Each state will, of course, need to tailor such specification to its own situation.

The allocation formula uses population as a general indicator of each county area's need for transportation facilities. Where special needs exist in sparsely populated counties (for example, particularly rough terrain requiring tunnels and bridges, blasting, etc.), such needs should be met through specific highway aid programs rather than through a general formula.

The draft bill provides that the funds allocated to each county area will be distributed between the county government and municipal governments within the county by giving equal weight to road and street usage and to a need-index which combines fiscal capacity and expenditure requirements. The need-index formula (section 3(2)) uses equalized assessed value of real property per linear mile of roads and streets as a measure of relative local fiscal capacity. Extra weight is given in the formula to those municipalities (or the county government) with below-average fiscal capacity.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act Providing for Distribution of a Share of Highway-User Revenues to Counties and Municipalities and Specifying the Purposes for Which the Funds May be Used."]

(Be it enacted, etc.)

Section 1. Distribution to Counties and Municipalities. [ ][1] percent of the proceeds from taxes and fees imposed by sections [cite sections of the statutes imposing motor fuel taxes, motor vehicle registration license fees and other highway-user revenues] shall be distributed to counties and municipalities to be used exclusively for the construction, maintenance and repair of county and municipal roads and streets and for the construction, maintenance, and operation of mass transportation facilities.[2]

Section 2. Allocation Among Counties. The funds authorized by section 1 shall be allocated for distribution within the counties by the [director of finance] in the ratio that the population of each county bears to the total population of the state, based on the last preceding Federal census or on a population census authorized by state law.[3] The allocation shall be determined annually for the ensuing fiscal year.

Section 3. Distribution to County and Municipal Governments. The amount allocated for distribution within each county under the provisions of section 2 shall be apportioned [quarterly] by the state [director of finance] and paid to the county government and to the municipal governments within the county in accordance with the following formula:

(1) One-half in the ratio of the number of vehicle miles driven on county roads and municipal streets as determined from time to time by the state [highway commissioner];[4]

(2) One-half in the ratio of the need index of each government. The need index of the county government and of each municipal government shall be computed by: (i) dividing the countywide average [equalized assessed] value of real property per mile of all county roads and municipal streets in the county by the average [equalized assessed] value of real property per mile of roads or streets for which each government is responsible; (ii) multiplying the quotient for each government by its average actual [and estimated] expenditure for all roads and street construction, maintenance and repairs during the last preceding [12 quarterly] periods; and (iii) summing up the results of these multiplications and computing the percentage of that sum for each government. The [equalized assessed] value of real property shall be determined by the state [tax commissioner].

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[1] The percentage distributed should be related to the State-local allocation of responsibility for the construction, maintenance and repair of streets and roads.

[2] In some states, a constitutional amendment is necessary to allow the use of motor vehicle "user charges" and gasoline taxes for providing mass transportation services.

[3] States with large sparsely populated areas may wish to give consideration to factors other than population in determining an equitable formula.

[4] Some States may wish to channel a larger proportion to local units served by mass transportation facilities by weighting the formula with a mass transit passenger-mile factor. An accident rate factor might also be considered in order to give recognition to the need for improved safety design.

Section 4. Annual Reports. **As the [appropriate state official] shall prescribe, each county and each municipality shall report actual and estimated expenditures for road and street construction, maintenance and repairs. The state [highway commissioner] shall conduct a continuing highway survey to ascertain the linear mileage and vehicle miles driven in each county and in each municipality.**

Section 5. Repeal of Conflicting Acts or Sections of Acts. **[Insert repealing clause].**

Section 6. Separability. **[Insert separability clause].**

Section 7. Effective Date. **[Insert effective date].**

16-19-00

STATE AID ADMINISTRATION

As States increasingly are involved in the financing of local government functions, the need for each State to systemize its State-local fiscal relations becomes more urgent. State aid to local governments doubled in the five year period 1962-1967 and it is now (fiscal 1969) approaching the $25 billion mark.

An effective State-local fiscal partnership requires a State organizational framework within which all State aid programs can be codified, reviewed and evaluated periodically. To this end, the States should place responsibility in either an executive agency or a joint committee of the legislature for continuing oversight of State aid programs, and establish an information system to provide data on local fiscal needs and resources.

The suggested legislation provides for the establishment of both fiscal standards (accounting, auditing, reporting) and performance standards. Performance standards are needed by local program administrators as a basis for carrying out the programs in accordance with the intent of the State policymakers. By the same token, those charged at the State level with reviewing and evaluating grant programs need standards in order to measure results against intended goals.

When enacting new State aid programs or reviewing those already on the statute books, States should require that the aided functions and projects conform to State and areawide planning objectives as well as to local plans. Such a requirement will help assure that State financial assistance contributes to statewide and regional goals, produces programs that complement one another, furthers the State's urban development policies, and avoids overlap and duplication of programs.

The organization and structure of local government, its authority to provide public services and its power to levy and collect taxes to pay for those services in full or in part all are derived from the State. The State has a concurrent responsibility to make sure that the benefits and costs of local governmental services are distributed equitably throughout the State. Too often, State aid and shared revenue formulas are constructed in such a way that State aid serves to prop up and keep alive incorporated areas that are not economically, geographically, and politically viable. One way for States to halt the chaotic spread of special districts and nonviable units of local government is to establish a State boundary adjustment agency to determine whether proposed new incorporations or annexations would result in viable communities and to compel the consolidation or dissolution of nonviable local government units.[1]

An equally objectionable side effect of mnay State aid formulas is that they perpetuate or even increase disparaties in fiscal capacity among units of local government by subsidizing wealthy incorporated communities that do not need State aid to provide an adequate level of public services for their residents.

The draft legislation provides for the Governor annually to submit proposals to the legislature for improvement of State-local fiscal relations, including revisions of state-aid formulas in the light of data on local fiscal needs and resources and on the political and economic viability of local units of government. States should consider amending State-aid formulas so as to eliminate or reduce aid allotments to nonviable local units.

[1] See previous ACIR suggested legislation on "State Authority Over Municipal and Special District Boundary Adjustments."

16-19-00

Suggested State Legislation

[Title should conform to State requirements.]

(Be it enacted, etc.)

Section 1. Short Title. **(This act may be cited as the "State-Local Relations Act of (year)".)**

Section 2. Findings and Declaration of Policy. **The [legislature] finds and declares that the present system of State aid to local governments has developed piecemeal, and that a unified system of state aid is urgently needed for the orderly development of a state-local partnership to assure that essential public services are provided in the most effective manner. It is the purpose of this act to establish an organizational and procedural framework governing the formulation, evaluation, and continuing review of all state aid programs; and to establish general policy governing the administration of state aid.**

Section 3. State-Local Fiscal System. **(a) In order to provide an effective system of state aid to local governments, the [appropriate state agency][2] shall:**

(1) Compile and maintain in a unified, concise, and orderly form information about all state programs which involve the distribution of funds to local government (hereinafter referred to as "state aid");

(2) Continuously review and evaluate all state aid programs to determine the extent to which they meet fiscal, administrative, and program objectives;

(3) Develop, in conjunction with other state agencies, an information system to provide data on comparative local fiscal needs and resources; and

(4) Evaluate federal aid programs, including direct federal-local aid programs, in terms of their compatibility with state objectives and their fiscal and administrative impact on state and local programs.

(b) In reviewing and evaluating state aid programs, the [agency] shall take account of appropriate fiscal and performance standards and, where adequate standards are lacking, shall recommend standards to the appropriate agencies of the state government. The standards shall include, but shall not be limited to:

(1) Accounting, auditing, and reporting procedures;

(2) Minimum service levels;

(3) Eligibility of recipient governments and program beneficiaries; and

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[2] Budget or Planning Agency or Department of Community Affairs or similar agency if such has been established. However, some State legislatures may wish to retain the responsibility by delegating it to a joint standing committee.

(4) Where appropriate, citizen participation and public hearings.

Section 4. Conformance of State Aid Programs to Comprehensive and Functional Planning Objectives. (a) Every agency administering state aid to local governments shall require that the aided activities conform to local, regional, and statewide comprehensive and functional plans in accordance with [cite the appropriate statutes relating to state, regional and local planning].[3] As a condition to receiving financial assistance a local government may be required to submit a functional plan for approval of the agency head administering the program.

(b) The head of each grant-administering agency shall issue criteria and guidelines for the preparation of local functional plans, which shall include, but shall not be limited to, provisions for:

(1) Conformance to local, regional, and statewide comprehensive plans;

(2) Survey of needs in the functional area being aided;

(3) Economic, social, and demographic data to be incorporated in the functional plan and in any applications for state aid, provided that such data requirements shall conform to the common data base to be prepared under the provisions of paragraph (c).

(c) The [agency] shall compile economic, social and demographic data, applicable elements of which shall be incorporated in the data requirements of all state aid programs subject to the provisions of this section.

Section 5. Governor's Report to the [Legislature]. The Governor shall annually submit proposals to the [legislature] for improvement of state-local fiscal relations. The proposals shall include, but shall not be limited to:

(1) Grant consolidation plans;

(2) Simplification and standardization of grant requirements;

(3) Revisions of equalization formulas in the light of data on local fiscal needs and resources and the political and economic viability of local units of government;

(4) New state aid programs; and

(5) Improvements in the flow of information concerning state and federal grants-in-aid.

Section 6. Separability Clause. [Insert separability clause].

Section 7. Effective Date. [Insert effective date].

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[3] See previous ACIR suggested legislation on "State and Regional Planning."

16-33-00

PREFERENTIAL PROCUREMENT PRACTICES TO FURTHER STATE URBANIZATION POLICIES[1]

One device which some States may wish to consider as an aid in achieving better geographic distribution of economic and population growth is the adaptation of their procurement practices to stimulate growth and development of particular cities and regions.

The receipt of a contract in a rural growth area, or in a labor surplus city neighborhood, can generate employment where it is needed and have a mutliplier effect as supporting activities are developed. It is critically important that such a proposed preferential public contract policy be implemented selectively. If it is not administered specifically to promote balanced economic development and urbanization, it can become so widely available as to give a publicly subsidized private advantage, without any accompanying public benefits, and destroy the obvious gains made in many States through uniform purchasing practices.

The following draft legislation, therefore, should not be enacted by a state that does not have an official state plan for urban growth which designates those rural growth areas and labor surplus areas in which public contractors are to receive preferential treatment.

Legislative criteria for determining which areas should be the beneficiaries of such a preferential purchasing policy would need to be consistent with the State urban development plan. The purchasing policy would then be a tool for implementing the state plan. The legislative criteria should designate the areas where population in-migration and economic growth are to be encouraged or discouraged and should be specific, in order to avoid challenge on the grounds of unconstitutional delegation of powers. The criteria might, for example, include reference to population size and the trend of population growth in communities to be given preference.

Successful implementation of a preferential purchasing policy will require aggressive administration, not only by state purchasing officials but also by the state industrial or economic development agency, where one exists. The purchasing agents will have to pursue a positive policy of soliciting bids from the desirable growth areas. The development agency's role should be to seek out and encourage potential bidders in such areas to take advantage of their preferential position.

Section 1 of the draft bill declares that the purpose of the legislation is to encourage a better geographic distribution of economic and population growth consistent with state urban growth policies. Section 2 provides that in awarding state contracts for goods and services, the state purchasing officer shall give a credit to bids or offers on whatever amount of goods or services are to come from those rural growth areas or labor surplus city neighborhoods designated by the state urbanization plan. This practice would not discriminate among businesses, since a large firm located in another city can get a credit if the goods are produced or the service performed in a designated rural growth center or labor surplus city neighborhood. Added cost to the state will not equal the credit offered, as such credit is given only in the evaluation of bids or offers and not in a dollar addition to the offer or price.

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[1] This draft bill incorporates one of several approaches set forth in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth,* as measures for the States to consider in implementing policies for urban growth and new community development.

16-33-00

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act allowing preferential procurement for goods and services produced or provided in those areas designated in the state urbanization plan."]

(Be it enacted, etc.)

Section 1. Purpose. The [legislature] finds that: (1) a better geographic distribution of economic and population growth is essential to carry out the state's policies for urban growth; (2) deliberate and selective measures should be adopted to channel private investment to locations where economic growth will have its maximum impact on state urbanization policy goals; and (3) in order to generate new employment in those rural community growth centers and city labor surplus areas designated by the [appropriate state official] pursuant to the official state urbanization plan, preferential state procurement practices based on state urban growth policies can provide a significant stimulus to the growth and development of these areas and have a multiplier effect as supporting business and industrial activities are developed.

Section 2. Preferential Deduction. (a) Notwithstanding any other provisions of law, for the purpose of determining to whom a state contract shall be awarded, the [state purchasing officer][1] shall declare the final price bid, offered, quoted, or proposed, to be the price bid, offered, quoted, or proposed less a deduction of [ ] percent of such price for goods or services rendered in a rural growth area or labor surplus city neighborhood designated pursuant to the official state urbanization plan. The deduction shall also apply to that portion of a price bid, offered, proposed, or quoted, which represents goods to be produced or services to be rendered by the contractor in the designated areas. Deductions shall be approved only upon a request by the bidder accompanied by proof of eligibility.

(b) The final bid, as determined by subsection (a) of this section for awarding a contract, shall not affect the price the state pays the contractor.

Section 3. Separability. [Insert separability clause].

Section 4. Effective Date. [Insert effective date].

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[1] Where there is no centralized purchasing agency or where significant purchasing is done by a number of different agencies, specific agencies at this point should be listed.

17-10-00

REMOVAL OF CONSTITUTIONAL RESTRICTIONS ON STATE BORROWING

Because of the financial crises of the nineteenth century and ill-fated State efforts to finance internal improvements, the great majority of States have placed severe restrictions on the legislature's power to incur public debt.

Only nine States (Connecticut, Delaware, Louisiana, Maryland, Massachusetts, Minnesota, New Hampshire, Tennessee, and Vermont) permit their legislatures to borrow without restriction as to amount. The rest limit the legislature by constitutional provisions, or by the requirement of electoral referendum approval, or both.

Today, however, States increasingly are asked to participate in numerous Federal grant-in-aid programs for capital improvement projects, such as airports, hospitals, and university buildings. In addition, local governments have sought State aid in contributing to the non-Federal share of Federally-aided programs administered locally.

These demands, added to the State's own growing needs, have created intense pressure for expanded borrowing authority, leading to circumventions of various kinds. There has been increased use of revenue bonds, public corporations, lease-purchase agreements, and reimbursement obligations. The debt created by these devices is called non-guaranteed debt, since the States do not pledge their general funds to repay it.

Use of these methods to by-pass restrictive debt limits has had some undesirable consequences. Because the States do not pledge their credit or taxing power to retire the bonds, they pay higher interest rates. Frequently, States have had to create, at additional cost, special administrative organizations. Whenever an independent authority administers an activity financed with non-guaranteed debt, it has the further undesirable effect of moving political accountability one step further from the public than when the legislature itself authorizes debt secured by the full faith and credit of the State.

The severity of business downturns, one of the causes of past bond defaults, has diminished. Countercyclical devices now are built into the American economy, and the Federal Government has developed fiscal tools to dampen fluctuations of the business cycle. Moreover, the growth and expansion of each State's economic base in recent years, coupled with the diversified tax systems now found in many States, assure greater stability in State revenues.

In the face of urgent needs, and in the light of new economic circumstances, States should re-examine constitutional restraints on State borrowing authority to assure that the State is not deprived of any legitimate fiscal power.

The provisions which follow are patterned after the Maryland constitutional convention draft. The legislature is given authority to incur indebtedness "for any public purpose," to be secured by an irrevocable pledge of the full faith and credit and unlimited taxing power of the State.

The virtue of placing the full faith and credit of the State and its unlimited taxing power behind such indebtedness is that it expresses clearly and precisely the concept of a State debt. This approach strengthens the State's credit by removing ambiguity that has often led to a stream of litigation. The provision in the fourth sentence, which in effect makes the State debt a first charge upon the general funds of the State, also serves to strengthen the State's credit position.

Nothing in this amendment precludes the State or any of its agencies from continuing to issue revenue

bonds secured, not by a pledge of the full faith and credit of the State, but by the revenues of the project for which the revenue bonds are issued.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to State practice and requirements.]

Section 1. **The [legislature] may incur indebtedness for any public purpose prescribed by law. All such indebtedness shall be secured by an irrevocable pledge of the full faith and credit and unlimited taxing power of the state. Unless the law authorizing the creation of an obligation includes such an irrevocable pledge, the obligation shall not be considered an indebtedness of the state. If at any time the [legislature] fails to appropriate sufficient funds to provide for the timely payment of the interest upon and installment of principal of all state indebtedness, there shall be set apart from the first revenues thereafter received applicable to the general funds of the state a sum sufficient to pay such interest and installments of principal. All state indebtedness shall mature within [ ] years from the time such indebtedness is incurred. The legislature may authorize the issuance of revenue bonds, which shall not be an indebtedness of the state, but which shall be secured by receipts from the project for which the bonds are issued.**

Section 2. **[All parts of the constitution in conflict with this amendment are hereby repealed.] [Sections (identify those sections of constitution to be repealed) are hereby repealed.]**

Section 3. **[Insert appropriate language, consistent with the referendum requirements for amending the constitution and with state election laws, for submission of the proposed amendment to the electorate.]**

31-11-00

STATE TECHNICAL SERVICES FOR LOCAL GOVERNMENT

State agencies are frequently authorized to provide specific types of technical assistance or services to local governments. In some instances the cost of such services is financed by the state; in others, they are jointly financed; and in still others, they are financed solely by the unit of local government requesting the service. In almost all instances such authority is authorized by individual statute adopted by the legislature.

Areas in which such services are often available to local governments include property assessment, public health services, highway planning and construction, and preparation of community development plans. The initiation of new programs at both state and local levels of government in recent years would seem to dictate that, while existing financing patterns remain undisturbed, state agencies should also have broad authority to provide technical services to local government on a reimbursable basis.

While certain services may not directly affect state interests, costs of providing those services would be reduced where state expertise and equipment available for use by the local government (e.g., laboratory, computer, and training services). The suggested act provides general authorization for all state agencies to provide special and technical services on a reimbursable basis to local governments.

However, under an optional provision of the draft, such authority could not be utilized to obtain services from the state which could be readily obtained from private business channels.

Section 1 sets forth briefly the purpose of the act and section 3 provides the general authority to state agencies to enter into such arrangements. Section 4 indicates that the cost of financing services will not be charged against the appropriation of the state agency and section 5 requires that the head of a state agency furnishing such services make an annual report to the governor and the legislature indicating the scope of the services provided.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act authorizing state agencies to provide technical services to local government on a reimbursable basis."]

(Be it enacted, etc.)

Section 1. Purpose. It is the purpose of this act to authorize state agencies to provide specialized or technical services to units of local government and to enable units of local government to avoid unnecessary duplication and expense in performing necessary governmental services.

Section 2. Definitions. As used in this act:

(1) "unit of local government" means a county, municipality, city [town, township, metropolitan regional agency, authority, or a school or other special district].

(2) "Specialized or technical services" means special statistical and other studies and compilations, [development projects, demonstration projects], technical tests and evaluations, technical information, training activities, professional services, surveys, reports, and any other similar service functions which the [administrative head] of any agency is authorized by law to perform.

Section 3. Authority to Provide Service. The [administrative head] of any agency of the state is authorized, within his discretion and upon written request from a unit of local government, to provide specialized or technical services, upon the payment, by the unit of local government making the request, of the cost of such services [, but the services shall not include those that can be as reasonably or expeditiously obtained through ordinary business channels]. This authority in no way reduces the responsibility of any state agency to provide services otherwise required by law.

Section 4. Reimbursement to Appropriation. All monies received by any agency of the state in payment for furnishing specialized or technical services authorized under this act shall be deposited to the credit of the appropriation or approriations from which the cost of providing the services has been paid or is to be charged.[1]

Section 5. Reports. The [administrative head] of any agency of the state, providing specialized or technical services under this act, shall furnish annually to the governor and the [legislature] a report on the scope of the services so provided.

Section 6. Effective Date. [Insert effective date.]

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[1] This section may require adjustment to comply with state constitutional requirements.

31-22-00

LOCAL GOVERNMENT RESIDUAL POWERS

A familiar rule of law with respect to local governmental units is that they may exercise only those powers affirmatively conferred upon them by statute or constitutional provision. Even when legislatures have conferred powers affirmatively, state courts usually have narrowly construed grants of powers to local government. Such narrow construction, despite the best efforts of legislatures and local governments themselves, often have prevented local government from assuming its proper responsibilities.

Experience has shown that where local governments are not adequately empowered to meet their responsibilities, pressure is exerted upon both the state and federal governments to assume responsibility for solving local problems and for providing needed governmental services. Under such circumstances, the flow of responsibility to the state or the federal government often is detrimental not only to the best interests of our society, but is unnecessary. The effectiveness of local government in particular, and the federal system in general, requires that local governments have adequate authority to meet their responsibilities. Consistent with this general philosophy, the following draft of a constitutional amendment is presented for study and consideration by the states. In addition a similar proposal of the National Municipal League, not as comprehensive as the amendment, is also set forth.

The amendment would grant "all residual functional powers" to municipalities and counties, or other selected units, that are not otherwise specifically denied in the state constitution or by general law. In given functional areas, the legislature, rather than pre-empting a whole field of activity from local government could, at its discretion, prescribe limitations on local activity. The amendment is designed to permit the legislature to determine what functions or portions of functions should be undertaken by the state or undertaken by local government. While freeing the bonds of local government the state should, at the same time, exert greater leadership in resolving problems that are interlocal or that affect many localities in the state.

It is important to emphasize that the delegation of residual powers should be preceded by a careful review of affirmative limitations upon the powers of local government within a state. Such delegation should occur simultaneously with the enactment of a local code, by which the state legislature places necessary limitations upon local powers and reserves other powers for the state.

It should be noted that while the amendment would permit municipalities and counties and other selected units of local government to exercise the authority granted by the proposed amendment, such authority should be granted only to units of general government whose governing bodies are held directly responsible for their actions by the people at election time. Therefore, states should consider carefully what units of general government should be granted the powers authorized by the amendment.

Residual Powers Constitutional Provision

"Municipalities and counties [or selected units identified to best suit the conditions in a given state] shall have all residual functional powers of government not denied by this constitution or by [general] law. Denials may be expressed or take the form of legislative pre-emption and may be in whole or in part. Express denials may be limitations of methods or procedure. Pre-empted powers may be exercised directly by the state or delegated by [general] law to such subdivisions of the state or other units of local government as the legislature may by [general] law determine."[1]

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[1] The constitutional language proposed by the National Municipal League in its "model State Constitution" is: *"Powers of Counties and Cities.* A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties and cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony."

31-31-00

EXTRATERRITORIAL PLANNING, ZONING, AND SUBDIVISION REGULATION

Uncontrolled development at unincorporated fringes of municipalities can have serious effects on adjoining municipalities and the orderly growth of a whole metropolitan area. Some fringe areas are "shanty towns" with unsanitary conditions, mud-rut streets in incompleted subdivisions, and unplanned mixtures of industrial, commercial, and residential property uses. Others are havens for gambling and vice, or represent fire hazards at the city doorstep. Many have deficiencies that are not so readily apparent yet constitute unsatisfactory and dangerous conditions.

Where counties have not exercised authority to control unincorporated fringes through effective county planning, zoning, and subdivision regulation, the extraterritorial exercise of planning, zoning and subdivision regulation by municipalities can be an important method of preventing development of these problem areas around individual cities, and for easing eventual transition to a sound governmental structure in the entire urban area.

About 30 states have authorized extraterritorial subdivision regulation, and approximately 15 have authorized extraterritorial zoning. In addition, extraterritorial planning authority may be exercised in some states under the municipal planning enabling statute. Some of the existing statutory grants, however, are limited in application to one or at most a few municipalities. A recent example of a grant or extraterritorial authority is a 1963 act of the Texas Legislature giving cities subdivision control over territory within one-half to five miles of their boundaries, the distance depending on the size of the city.

The suggested legislation is in the form of an amendment to existing state statutes on planning, zoning, and subdivision regulation. It is adapted from a 1959 North Carolina statute on extraterritorial zoning[1] recommended by the Municipal Government Study Commission of the North Carolina Assembly[2] and an earlier North Carolina statute on extraterritorial subdivision regulation.[3] The draft provides for representation of the unincorporated territory on the planning and zoning commission and the zoning adjustment body for participation in all matters pertaining to plans, recommendations, and regulations for such extraterritorial areas which fall within the jurisdiction of these boards and commissions. The fact that the unincorporated area has representation with respect to these matters gives a considerable measure of protection against arbitrary action by the municipality. Of course the existing powers of the municipal governing body regarding formal adoption and action on plans, zoning regulations and subdivision regulations as provided in the existing statutory law of the state would remain unchanged.

Although the North Carolina pattern of enabling authority for local planning and zoning bodies and of their relation to parent municipal governing bodies is fairly common, a number of different patterns exist. The distribution of authority to make recommendations and to make final decisions and rulings may vary not only from state to state but within a given state. Furthermore, the number and names of specific boards and commissions involved varies. The planning commission may be responsible not only for developing plans but also for developing recommendations regarding zoning ordinances. In this case a zoning commission is not provided for. In some cases final approval of subdivision plats is given by the planning commission. In other cases the municipal governing bodies grant this approval. Similarly, in some instances the board of zoning adjustment or appeals can give approval to variances whereas in others final approval must be given by the municipal body.

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[1] North Carolina, *Session Laws* (1959), c. 1204.

[2] *Report* (Raleigh, N. C., 1958), pp. 18-19.

[3] North Carolina, *General Statutes* (1961), sec. 160-226.

These varying patterns depend on the basic enabling statutes granting authority to plan, zone, and exercise subdivision regulations to municipalities. The suggested legislation being in the form of an amendment is intended merely to extend this authority for a designated distance outside municipal boundaries and does not affect the basic provisions, which should be stressed. However, before adopting the suggested legislation as an amendment the basic law governing must be carefully examined to assure that any specific adoptions necessary are made. For example, in some states the statutes provide that a specific number of affirmative notes must be received for a variance to be approved. If additional representatives are participating from the extraterritorial area, specific provision would have to be made for a different requirement for adoption.

Even with provision for fringe area representation on the planning and zoning commission and zoning adjustment board, granting of extraterritorial zoning authority might stimulate a movement toward unsound "defensive" incorporations. This is a risk that seems worth taking in view of the possible advantages to be gained by orderly fringe development. Also, any action directed toward greater control over the unincorporated area, whether it be giving municipalities greater initiative in annexation proceedings or, as in this case, greater control through extraterritorial zoning, should be accompanied by simultaneous strengthening of the state's regulation of new incorporations, as provided in suggested legislation on State authority over boundary adjustments (31-91-60).

States desiring to enact legislation on extraterritorial planning, zoning, and subdivision regulation may find it helpful also to consult a report by Frank S. Sengstock, *Extraterritorial Powers In the Metropolitan Area,* published by the Legislative Research Center of the University of Michigan Law School in 1962. It contains numerous citations to state statutes and court decisions affecting extraterritorial jurisdiction.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "Amendment to state legislation to authorize municipalities to exercise planning, zoning, and subdivision regulation powers beyond their corporate limits, except in counties where county planning, zoning, or subdivision regulation already exist."]

(Be it enacted, etc.)

Section 1. [Appropriate citation to existing planning, zoning, and subdivision regulation law] is hereby amended by adding the following new sections at the end thereof:

"*Section [ ]. Extraterritorial Jurisdiction.* (a) *Planning.* In any county not having a county planning agency with jurisdiction in the unincorporated territory, the legislative body of any municipality whose population at the time of the latest decennial census of the United States was [ ] or more may exercise the comprehensive planning powers granted in [cite appropriate statutes] not only within its corporate limits but also within [ ] mile[s] in all directions of its corporate limits and not located in any other municipality;

(b) *Zoning Ordinance.* In any county not having a county zoning ordinance applicable to the unincorporated territory, the legislative body of any municipality whose population at the time of the latest decennial census of the United States was [ ] or more may exercise the zoning powers granted in [cite appropriate statutes] not only within its corporate limts but also within [ ] mile[s] in all directions of its corporate limits and not located in any other municipality;

(c) *Subdivision Regulations.* In any county not having county subdivision regulations applicable to the unincorporated territory, the legislative body of any municipality whose population at the time of the latest decennial census of the United States was [ ] or more may exercise the subdivision regulation powers granted in [cite appropriate statutes] not only within its corporate limits but also within [ ] mile[s] in all directions of its corporate limits and not located in any other municipality; but, any ordinance intended to have application beyond the corporate limits of the municipality shall expressly so provide, and be adopted in accordance with the provisions set forth therein.

"Section [ ]. Boundary Lines. In the case of land lying outside a municipality and lying within a distance of [ ] mile[s] of more than one municipality, the jurisdiction of each such municipality shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities, or at such line as is agreed to by the governing bodies of the respective municipalities.

"Section [ ]. Representation on Boards and Commissions. (a) *Planning and Zoning.* As a prerequisite to the exercise of such powers, the membership of the [planning board] [zoning commission] charged with the preparation of proposed comprehensive planning, zoning, and subdivision regulations for the [ ] mile area outside the corporate limits shall be increased to include additional members who shall represent such outside area. The number of additional members representing such outside area shall be [equal in number to the members of the [planning board] [zoning commission] appointed by the governing body of the municipality]; but, if the extraterritorial area includes parts of two or more counties, the area included from each county shall have additional members [equal in number to the members of the [planning board] [zoning commission] appointed by the governing body of the municipality]. Such additional members shall be residents of the [ ] mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the unincorporated area is situated. Such members shall have equal rights, privileges, and duties with the other members of the [planning board] [zoning commission] in all matters pertaining to the plans and regulations of the area in which they reside, both in preparation of the original plans and regulations and in consideration of any proposed amendments to such plans and regulations.[1]

(b) *Zoning Adjustment.* In the event that a municipal governing body adopts zoning regulations for the area outside its corporate limits, it shall increase the membership of the [board of zoning adjustment] by adding additional members [equal in number to the members of the [board of zoning adjustment] appointed by the governing body of the municipality]; but, if the extraterritorial area includes parts of two or more counties, the area included from each county shall have additional members [equal in number to the members of the [board of zoning adjustment] appointed by the governing body of the municipality]. Such members shall be residents of the [ ] mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the unincorporated area is situated. Such members shall have equal rights, privileges, and duties with the other members of the [board of zoning adjustment] in all matters pertaining to the regulation of such area. The concurring vote of a majority of the members of such enlarged board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with the enforcement of an ordinance.

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[1] In states where the planning board or commission gives final approval in specific cases of subdivision regulation, additional language may be needed to assure that its extraterritorial authority is not limited to the preparation of proposed regulations or amendments but also includes final action on matters when such authority is included in the existing statutory law which this amends.

"*Section [ ]. Enforcement.* Any municipal governing body exercising the powers granted by this section may provide for the enforcement of its regulations for the outside area in the same manner as the regulations for the area inside the municipality are enforced."

Section 2. Separability. [Insert separability clause.]

Section 3. Effective Date. [Insert effective date.]

31-32-00

METROPOLITAN AREA PLANNING COMMISSIONS

The suggested legislation is based on the concept that planning, regardless of the level of government at which it is undertaken, is a staff function which facilitates the policy formulating process. Planning is a necessary tool for many of the technical and administrative judgments, both political and economic, which units of local government in the large metropolitan areas are required to make continually. To be worthwhile and to serve a useful rather than an academic purpose, the respective facets of metropolitan area planning must be closely geared into the practical decision-making process regarding land use, tax levies, public works, transportation, welfare programs, and the like.

The proposed legislation is based on the assumption that while long-range planning must be undertaken for all of a metropolitan area viewed as an entity, the individual authority and responsibilities of local units of government must be respected and reconciled with overall interests. State legislation should therefore permit local latitude in the agreements whereby metropolitan area planning commissions are established, while at the same time setting minimum standards for the organization and powers of such commissions.

The suggested act below sets a minimum standard for the number of local jurisdictions which must participate in order to ensure a sufficiently wide basis for effective planning and enforcement. Membership on the commission is specified as consisting of elected officials in order to "gear planning into the practical decision-making process," with provision made for appointment of some public members as well.

In designation of a metropolitan planning area, reference is made to the federal definition of a "standard metropolitan statistical area," with a footnote indicating that some states may prefer to substitute a different definition in order to apply the act to areas not currently identified as SMSA's. Whatever definition is used should ensure that the planning area is large enough to include an integrated trading and employment area, as defined by such measures as density of resident population, the pattern of journey-to-work, and retail trading territory. In adapting the proposed legislation to their particular needs, states may wish to define its applicability in any of the following ways: (1) all metropolitan areas of the state, present or future; (2) metropolitan areas listed by name; (3) specified classes of cities and their environs.

The powers and duties section takes into account Congressional enactments designed to strengthen intergovernmental coordination in the use of federal planning and project grants. It should be noted that the Congress in the Housing Act of 1961 has granted advance consent to interstate compacts for urban planning functions in interstate metropolitan areas.

Provision is made for the adoption of metropolitan area plans by local units of government, and conversely, for advisory review or approval by the metropolitan area planning commission of local plans and projects. However, the suggested legislation also provides at this point, that if an interlocal agreement authorizes the metropolitan area planning commission to require conformity with its own comprehensive or master plan, such a degree of regulation can be undertaken only with respect to those communities party to the agreement.

In order to encourage local communities to take a proper degree of initiative and to determine for themselves the nature of their cooperative activities, the proposal is that the actual establishment and functioning of metropolitan area planning commissions be accomplished by the drafting and execution of interlocal agreements, pursuant to authorizing state statute. In this connection, it should be pointed out that the Interlocal Contracting and Joint Enterprises Act, (31-91-00), below provides a general authorization for cooperative undertakings of such kinds as the localities themselves may determine within the framework of their existing statutory and constitutional powers. As is the case of the legislation suggested below, the instrument authorized for achieving the cooperative purposes is the interlocal agreement. The Interlocal Cooperation Act deals with a number of matters, such as financing, representation, approval of interlocal agreements by the appropriate state officials, and liability for performance under the agreement which should be incorporated in any authorizing statute.

It is suggested that states could proceed to use the statute suggested below and the Interlocal Contracting and Joint Enterprises Act in any one of several ways: (1) if a statute similar to the Interlocal Contracting and Joint Enterprises Act has been enacted, or is to be enacted, the suggested act following this explanatory statement could be used as a guide in drafting some of the provisions of the implementing interlocal agreements; (2) if the interlocal cooperation that a states wishes to authorize is only in the field of planning, the Interlocal Contracting and Joint Enterprises Act could be adapted to apply only to that subject, and the draft below could be used as a guide in formulating the implementing agreements; or (3) the draft act below could be used as the authorizing statute. In the last named event, the Interlocal Cooperation Act should be consulted to determine which of its provisions should be added to the authorizing statute.

In comparing the suggested act below and the Interlocal Contracting and Joint Enterprises Act for use in interstate metropolitan areas, it should be noted that a somewhat different approach is contemplated. The concluding portion of Section 6 of the suggested act below presumes that a metropolitan area planning commission must be created for the portion of the metropolitan area lying within the single state, and that such commission would then cooperate with localities on the other side of the state line. In contrast, the interlocal Contracting and Joint Enterprises Act provides authorization for the establishing of a metropolitan area commission whose jurisdiction would extend throughout the entire metropolitan area, including the portions in the two or more states affected.

Another approach to organizing for the provision of planning services within a metropolitan area is provided by the "Metropolitan Functional Authorities" proposal in this *Program* (31-63-00).

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing for the establishment of metropolitan area planning bodies."]

(Be it enacted, etc.)

Section 1. Purpose. The legislature recognizes the social and economic interdependence of the people residing within metropolitan areas and the common interest they share in its future development. The legislature further recognizes that plans and decisions made by local governments within metropolitan areas with respect to land use, circulation patterns, capital improvements and the like, affect the welfare of neighboring jurisdictions and therefore should be developed jointly. It is, therefore, the purpose of this act to provide a means for: (1) formulation and execution of objectives and policies necessary for the orderly growth and development of the metropolitan area as a whole; and (2) coordination of the objectives, plans and policies of the separate units of government comprising the area.

Section 2. Creation of a Metropolitan Area Planning Commission. A metropolitan area planning commission may be established pursuant to the following procedures:

(1) Two or more adjacent incorporated municipalities, two or more adjacent counties, or one or more counties and a city or cities within or adjacent to the county or counties may, by agreement among their respective governing bodies, create a metropolitan area planning commission, if (i) in the

case of municipalities and cities, the largest one within the metropolitan planning area, as defined in section 3, shall be a party to the agreement; and (ii) the number of counties, cities, other municipalities, townships, school and other special districts or independent governmental bodies party to the agreement shall equal 60 per cent or more of the total number of such counties, cities and other local units of government within the metropolitan area,[1] as defined in section 3. The agreement shall be effected through the adoption by each governing body concerned, acting individually, of an appropriate resolution. A copy of such agreement shall be filed with the [chief state records officer], [state office of local affairs] and [state planning agency.]

(2) Any city, other municipality or county may, by legislative action of its governing body, transfer or delegate any or all of its planning powers and functions to a metropolitan area planning commission; or a county and one or more municipalities may merge their respective planning powers and functions into a metropolitan area planning commission, in accordance with the provisions of this act.

Any additional county, municipality, town, township, school district or special district within the metropolitan planning area, as defined in section 3, may become party to the agreement.

Section 3. Designation of a Metropolitan Planning Area. **"Metropolitan area" as used herein is an area designated as a "standard metropolitan statistical area" by the U.S. Bureau of the Census in the most recent nationwide Census of the Population.[2] The specific geographic area in which a metropolitan area planning commission shall have jurisdiction shall be stipulated in the agreement by which it is established**

Section 4. Membership and Organization. **Except as provided below, membership of the commission shall consist of representatives from each participating government or stipulated combinations thereof, in number and for a term to be specified in the agreement. Such representatives shall consist of elected officials, except that the Commission may appoint not to exceed [ ] members from the general public who have demonstrated outstanding leadership in community affairs. A representative of the state government may be designated by the governor to attend meetings of the commission. Members of the commission shall serve without compensation, but shall be reimbursed for expenses incurred in pursuit of their duties on the commission. The commission shall elect its own chairman from among its members, and shall establish its own rules and such committees as it deems necessary**

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[1] Particular states may find it appropriate and desirable to require fewer kinds of local units of government to be initial parties to the agreement, thereby reducing the total number needed for establishment of a commission under this act.

[2] Particular states may find it appropriate and desirable to apply a somewhat different definition from this, tailored to their particular circumstances. For example, a 1961 Enactment in Colorado (H.R. 221) defines a metropolitan area as "a contiguous area consisting of one or more counties in their entirety, each of which has a population density of at least 15 persons per square mile." Other quantitative factors may be used in a metropolitan area definition, such as percentage of county residents employed in the central city.

to carry on its work. Such committees may have as members persons other than members of the commission and other than elected officials. The commission shall meet as often as necessary, but no less than four times a year.

The commission shall adopt an annual budget, to be submitted to the participating governments which shall each contribute to the financing of the commission according to a formula specified in the agreement. Subject to approval of any application therefor by the [appropriate state agency], a metropolitan area planning commission established pursuant to this act may make application for, receive and utilize grants or other aid from the Federal Government or any agency thereof.[1]

Section 5. Director and Staff. The commission shall appoint a director, who shall be qualified by training and experience and shall serve at the pleasure of the commission. The director shall be the chief administrative and planning officer and regular technical advisor of the commission, and shall appoint and remove the staff of the commission. The director may make agreements with local planning agencies within the jurisdiction of the metropolitan area planning commission for temporary transfer or joint use of staff employees, and may contract for professional or consultant services from other governmental and private agencies.

Section 6. Powers and Duties. The metropolitan area planning commission shall:

(1) Prepare and from time to time revise, amend, extend or add to a plan or plans for the development of the metropolitan area. The plans shall be based on studies of physical, social, economic and governmental conditions and trends, and shall aim at the coordinated development of the metropolitan area in order to promote the general health, welfare, convenience and prosperity of its people. The plans shall embody the policy recommendations of the metropolitan area planning commission, and shall include, but not be limited to:

(i) A statement of the objectives, standards and principles sought to be expressed in the plan.

(ii) Recommendations for the most desirable pattern and intensity of general land use within the metropolitan area, in the light of the best available information concerning natural environmental factors, the present and prospective economic and demographic bases of the area, and the relation of land use within the area to land use in adjoining areas. The land use pattern shall include provision for open as well as urban, suburban, and rural development.

(iii) Recommendations for the general circulation pattern for the area, including land, water and air transportation and communication facilities, whether used for movement within the area or to and from adjoining areas.

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[1] Consideration should also be given to providing for state aid either by making such a commission an eligible agency to apply for and receive state aid or by providing that local governmental units party to the agreement may apply for such aid on behalf of the commission.

(iv) Recommendations concerning the need for and proposed general location of public and private works and facilities, which by reason of their function, size, extent or for any other cause are of a metropolitan as distinguished from purely local concern.

(v) Recommendation for the long-range programming and financing of capital projects and facilities.

(vi) Such other recommendations as it may deem appropriate concerning current and impending problems as may affect the metropolitan area.

(2) Prepare, and from time to time revise, recommended zoning and subdivision and platting regulations which would implement the metropolitan area plan.

(3) Prepare studies of the area's resources, both natural and human, with respect to existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public service, local governments and any other matters which are relevant to metropolitan area planning.

(4) Collect, process and analyze at regular intervals, the social and economic statistics for the metropolitan area which are necessary to planning studies, and make the results of such collection, processing, and analysis available to the general public.

(5) Participate with other government agencies, educational institutions and private organizations in the coordination of metropolitan research activities defined under paragraphs (3) and (4) of the section.

(6) Cooperate with, and provide planning assistance to county, municipal or other local governments, instrumentalities or planning agencies within the metropolitan area and coordinate metropolitan area planning with the planning activities of the state and of the counties, municipalities, special districts or other governmental local units within the metropolitan area, as well as neighboring metropolitan areas and the programs of federal departments and agencies.

(7) Provide information to officials of departments, agencies and instrumentalities of federal, state and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the metropolitan area plan and the functions of metropolitan and local planning, and in order to stimulate public interest and participation in the orderly, integrated development of the region.

(8) Receive and review for compatibility with metropolitan area plans all proposed comprehensive land use, circulation, and public facilities plans and projects, zoning and subdivision regulations, official maps and building codes of local governments in the geographic area and all amendments or revisions of such plans, regulations and maps, and make recommendations for their modification where deemed necessary to achieve such compatibility.

(9) Review participating local government applications for capital project financial assistance from state and federal governments, and comment upon their consistency with the metropolitan

development plan; and review and comment upon state plans for highways and public works within the area to promote coordination of all intergovernmental activities in the metropolitan area on a continuing basis.

(10) Exercise all other powers necessary and proper for the discharge of its duties.

The metropolitan planning commission may exercise its powers jointly or in cooperation with agencies or political subdivisions of this state or any other state, or with agencies of the United States, subject to statutory provisions applicable to interjursidictional agreements.

Section 7. Certification and Implementation of Metropolitan Area Plans. All comprehensive metropolitan area plans as defined under section 6(1) as well as zoning, subdivision and platting regulations, proposed under section 6(2) shall be adopted by the metropolitan area planning commission after public hearing, and certified by the commission to all local governments, governmental districts and special purpose authorities within the metropolitan area. The agreement creating the metropolitan area planning commission shall specify that these plans be implemented in the following way: The metropolitan area plans and regulations, or parts thereof, may be officially adopted by any local government, governmental district or special purpose authority within the metropolitan area, and when so adopted shall supersede previous local plans and regulations.

Section 8. Cooperation by Local Governments and Planning Agencies. Any local government, governmental district or special purpose authority within the metropolitan area may, and all participating local governments, governmental districts and special purpose authorities shall, file with the metropolitan planning commission all current and proposed plans, zoning ordinances, official maps, building codes, subdivision regulations, and project plans for capital facilities and amendments to and revisions of any of the foregoing, as well as copies of their regular and special reports dealing with planning matters. Each governmental unit within the geographic area over which a metropolitan area planning commission has jurisdiction shall afford such commission a reasonable opportunity to comment upon any such proposed plans, zoning, subdivision and platting ordinances, regulations and capital facilities projects and shall consider such comments, if any, prior to adopting any such plan, ordinance, regulation or project. By appropriate provision of an agreement, the parties thereto may require that as a condition precedent to their adoption, any or all proposed plans, zoning, subdivision and platting ordinances, regulations, and capital facilities projects of their respective jurisdictions be determined by the metropolitan area planning commission to be [in conformity with] [not in conflict with] the relevant plan of the commission, but any power so to pass upon proposed plans, ordinances, regulations or projects shall be exercisable only with respect to the jurisdictions party to the agreement.

Section 9. Annual Report. The metropolitan area planning commission shall submit an annual report to the chief executive officers, legislative bodies and planning agencies of all local governments within the metropolitan area, and to the governor.

Section 10. Separability. **[Insert separability clause.]**

Section 11. Effective Date. **[Insert effective date.]**

31-33-00

REGIONAL PLANNING AND DEVELOPMENT COMMISSIONS

In the nationwide concern for the alleviation of economic hardship, it has become apparent that hard core areas of poverty and lagging development lie in small towns and farm communities of the nation as well as in major urban centers. Commonly cited illustrations, for example, are the Appalachian hollow and the small town that once served as the hub of commercial activity and supplied the needs of the surrounding countryside but is now steadily falling farther behind its bigger competitor on down the highway.

An effective attack on the problems of underdeveloped areas, urban or rural, requires action by local, state, and federal governments in partnership with the private sector of the economy. Local governments are obviously unable to cope on their own with the root causes of poverty and economic underdevelopment. On the other hand, they can take many steps to help their communities become more attractive as places in which to live and carry on productive enterprises. The trouble is, local governments in many areas of sparse population and after years of declining activity have limited fiscal and human resources to draw upon. Such resources are vital, just to take advantage of assistance programs increasingly available from state and federal governments. Moreover, the geographic jurisdiction of individual local units of government, even as broad as the county, is frequently not large enough to constitute a viable base for economic development.

Rural farm and nonfarm communities in a number of states are now moving into better positions to overcome these basic inadequacies of small communities, with the assistance of state legislation and state technical and financial assistance. In such states as Wisconsin, Georgia, Tennessee, and Missouri, they have undertaken to pool the financial and human resources of local communities over a broader yet essentially homogeneous area, for the purpose of studying economic and social needs and resources, making plans for best development of their resources, and acting cooperatively, usually through existing units of local government, to carry out the plans. The instrument for doing this is an areawide planning and development commission, representing the local governments of the area and employing a trained technical staff equipped to develop workable long range plans and work closely and effectively with community organizations, public and private, in carrying them out.

A major effort to help underdeveloped areas has at the same time been mounted by the federal government. The Economic Development Administration, as did the predecessor Area Redevelopment Administration, aim at providing economic stimulants through public works loans and grants. The Appalachian Regional Commission focuses on the economic and social problems of an area covering largely mountainous territory and small towns of parts of 12 states. The Economic Opportunity Act is directed toward rooting out and preventing poverty wherever it exists, and was amended in 1965 with specific direction to see that appropriate resources are devoted to the poverty-stricken of both rural and urban areas. These programs are in addition to Department of Agriculture programs aimed basically at raising the income and improving the lot of the individual farmer and rural resident, and the Department's more recent efforts through its rural community development service to provide technical assistance to farm communities in planning and developing their local economies. Finally, the Administration proposed to the Congress in 1966 a Community Development District program, under which rural communities would be given incentives and assistance to engage in orderly planning for the development of large rural areas.

Certain problems of interlevel and interprogram coordination have emerged from these new federal and state efforts. One is the danger that many different state, local, and federal programs in the same basic field – physical, economic, and social development – will exhaust the leadership and organization resources available in the rural communities. Another problem is the likelihood of overlapping, confusing, and perhaps contradictory requirements for local communities to comply with in order to take advantage of programs offered by federal and state governments. Thus, for example, the principal program under the Economic Opportunity Act – the Community Action Program – is administered at the local and multi-county level through community action agencies, pursuant to organization and procedural requirements set forth in detail

by the Office of Economic Opportunity. The Economic Development Administration has its own requirements for participation in its areawide program of stimulating loans and grants. The Appalachian Regional Development Act sets forth still additional requirements for local development districts. In each case, however, the governor of the state has, or may have, a hand in designating or approving designation of the boundaries of the respective development districts, and thus the state has leverage to effect some coordination.

It was in consideration of these conditions and the need to provide the framework for most effective use of limited resources, particularly in nonmetropolitan areas, that the Advisory Commission on Intergovernmental Relations in its 1966 report on *Intergovernmental Relations in the Poverty Program* made the following recommendation:

> . . . that States authorize and provide financial incentives for creation and operation of multi-purpose regional public agencies in non-metropolitan areas to undertake physical, economic, and human resource planning and development programs (including community action, economic and rural development, and areawide planning) over multi-county areas, particularly those areas in which local institutions have been unwilling or unable to respond to existing needs.
>
> The Commission further recommends that where States have taken such action, the head of each Federal department and agency administering grants for physical, economic and human resource planning and development be required, by statute or Executive Order, to: (a) require use of the geographic base established pursuant to such State action as a condition of Federal grants to such area; (b) utilize, to the maximum extent feasible, such multi-purpose agencies as the recipients of such grants; and (c) where other than the multi-purpose agency is used, require establishment of adequate checkpoint procedures to assure program coordination with, and the maximum use of the governing body, technical staff, and physical facilities of such multi-functional agencies.

The following draft statute would provide legislative authority and financial incentives for carrying out this recommendation at the state and local levels. To some extent it reflects experience in Georgia with areawide planning and development commissions. Some of these commissions have operated as community action agencies under the Economic Opportunity Act and the governor has also indicated that he will designate the commissions to serve as development districts under the Economic Development Act. Like the Georgia experience, in addition, the statute provides for state matching grants to encourage establishment and assist in operation of the areawide commissions. The draft act also reflects to some degree reference to the Wisconsin regional planning law, the Missouri state and regional planning and community development act, and the Tennessee economic development district act. A section-by-section summary follows.

After the declaration of purpose (section 1) and definitions (section 2), the statute makes the governor responsible for laying out multi-county planning and development districts (section 3) and for establishing commissions to carry on the planning and development functions in the districts (section 4). State stimulation for formation and operation of the districts is provided by authorizing state appropriations to match the local contribution up to a specified maximum (subsection 6(g)). Thus the statute gives the state some basic duties and responsibilities for the regional approach to economic and social planning and development.

At the same time, the act places major responsibility on local units of government in creation and operation of the commissions, reflecting the need to enlist their active support and participation. It makes county governing bodies responsible for initiating the designation by the governor of the development districts (subsection 3(a)), and all local units of general government for determining among themselves the composition of the commissions, subject to the requirement that commission members must be local elected officials (subparagraph 4(1)).

In the belief that states may differ as to the degree to which they wish to make the commission capable of carrying an operating and construction activities on their own, two basic alternatives are presented with

respect to the powers of the commissions. The first (section 5) empowers a commission to perform planning activities and, under contract or agreement with one or more local units, administer on their behalf programs available under federal planning and development legislation. The latter include community action and other activities under the Economic Opportunity Act and public works facilities construction under the Economic Development Act. Financing of the commission (section 6) is limited essentially to dues assessed against the local units of government, charges for special services, federal grants, state incentive matching grants, and revenues received from local units under contracts or agreements to administer federal programs for them.

The second alternative authorizes the same planning activites as under the first, but in addition, in bracketed subparagraphs of section 5, empowers a commission to act on its own in conducting operating and construction programs under federal and state development legislation. Bracketed subsections of section 6 give the commissions powers of property taxation, borrowing, and special assessments to support their direct operating and construction responsibilities.

Other provisions are the same under both alternatives. The governor is empowered to designate, unless precluded specifically by federal law, regional planning and development districts to serve as planning and development districts for purposes of federal planning and development programs. This provision, plus the provision for the commissions to act either on their own or on behalf of local governments in administering state and federal grants (subparagraph 5(2)), would provide the framework for having federal and state planning and development programs administered within the same geographic boundaries and making most effective use of leadership and staffing. The commissions are also empowered to assist state agencies in providing technical assistance to local governments, for example, assisting the state office of economic opportunity in providing technical assistance under the Economic Opportunity Act (subparagraph 5(2)).

Suggested Legislation

[Title should conform to state requirements. The following is one suggestion: "An act providing for the establishment of multi-county regional planning and development commissions."]

(Be it enacted, etc.)

Section 1. Purpose. **The legislature finds that: (1) many citizens of the state, particularly those residing outside of major urban centers, are not able to participate fully in the economic opportunities afforded to other citizens, largely because many of these areas are economically and physically underdeveloped; (2) despite the best efforts of local units of government, these areas are in need of assistance in planning and developing their economic, physical, and human resources; (3) successful achievement of these objectives requires a comprehensive, coordinated, and orderly program by which the resources of a number of communities may be pooled to overcome the effects of sparsity of population and inadequacies of economic and other resources; (4) the Congress has enacted a number of laws, including the Economic Opportunity Act, [the Appalachian Regional Development Act[1]], and the Public Works and Economic Development Act which provide assistance in carrying out planning and development activities to meet the needs of the citizens and to more fully develop areas of lagging**

[1] Applicable to 12 states affected by the Appalachian Regional Development Act.

growth; (5) these federal laws have separate and different requirements as to the organizational structure and geographic areas of local or areawide units administering their programs, with consequent overlapping and confusion and excessive demands on local leadership and staff resources; and (6) the assistance of the state is needed to make the most effective use of these and other programs in organizing and administering programs to meet the needs of the citizens of such areas. It is the purpose of this act, therefore, to provide more effective means and incentives for planning and development of the physical, economic, and human resources of the state, including a regional framework for effective execution and coordination of federal planning and development programs.

Section 2. Definitions. As used in this act:

(1) "Governing body" means the board, body, or persons in which the powers of local units are vested.

(2) "Local units of government" or "local units" include cities, villages, towns, counties [enumerate other units of general local government].

(3) "Population" means the number of residents as shown by the most recent nationwide census of population.

(4) "District" means an area of two or more contiguous counties designated by the governor as a regional planning and development district pursuant to section 3 of this act.

(5) "Commission" means a regional planning and development commission established pursuant to section 4 of this act.

Section 3. Designation of Regional Planning and Development Districts. (a) The governor may designate regional planning and development districts when he finds the following conditions exist: (1) the governing bodies of two or more contiguous counties signify by resolution that they desire designation of such counties as a district for purposes of this act; (2) the public has had an opportunity to register its views on the proposed creation of such a district, either at a public hearing held by the governing bodies upon adequate public notice prior to the adoption of the resolution, or through such other means as the governor shall find satisfactory; (3) there exists within the proposed district a clear need to plan and develop its physical, economic, and social resources, and the area contains adequate financial and other resources to support successful achievement of these objectives, including a minimum population of [ ], but the governor may waive such population limitation if he finds that the purposes of this act require such action; (4) the area within the proposed district has sufficient elements of homogeneity based upon, but not limited to, such considerations as topographic and geographic conformations, extent of urban development, the existence of special or acute agricultural, forestry, conservation or other rural problems, uniformity of social or economic interests and values, park and recreational needs, civil defense, or the existence of physical, social, and economic problems of a regional character; and (5) the proposed district meets such other reasonable and necessary general conditions, standards, and criteria as the governor may establish to further the purposes of this act. In establishing standards the governor shall afford all affected parties adequate notice and an opportunity to present relevant information.

(b) Regional planning and development districts designated by the governor under this section shall be used as the basis for proposing or designating areas for the purposes of the following federal acts, to the extent not precluded by such acts, unless the governor finds it necessary to waive or revise the districts to fulfill the purposes of this act: (1) the Economic Opportunity Act of 1964; (2) section 403 of the Public Works and Economic Development Act of 1965; (3) section 301 of the Appalachian Redevelopment Act of 1965; and (4) such other federal acts, existing or hereafter enacted, as may authorize financial assistance for undertaking physical, economic, and human resource planning and development programs.

(c) The governor may, after consultation with the governing bodies of the counties involved, revise the designation of districts as required to reflect changing conditions or otherwise to fulfill the purposes of this act.

(d) The [state planning office, office of local affairs, or other appropriate state agency] may assist interested local units in arranging for designation of a planning and development district and in establishing a regional planning and development commission as provided in sections 3 and 4 of this act. All departments and agencies of the state and any political subdivisions and public authorities thereof, are authorized and directed to provide such assistance and data as may be needed in carrying out the purposes of this act, including designation of districts and establishment of commissions.

(e) The governor may enter into agreements with the governors of any adjoining states to establish interstate regional planning and development districts consisting of one or more counties in each of the affected states. In negotiating the agreements, the governor shall be guided by the provisions of this act with respect to the area of such districts and the selection, composition, powers, and functions of district commissions. Any agreement shall specify: (1) its duration; (2) the precise organization, composition, and nature of the legal or administrative entity created thereby together with the powers delegated thereto; (3) its purpose or purposes; (4) the manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget threfor; (5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination; and (6) any other necessary and proper matters.

Section 4. Establishment of Regional Planning and Development Commissions. The governor may approve the establishment of a regional planning and development commission for each regional planning and development district to assist the local units of government within the district in carrying out the purposes of this act. Commissions approved by the governor shall conform to the following requirements:

(1) A commission shall consist of representatives of local units of government within the district, who shall be elected officials of the units. Their number, terms, and manner of selection shall be specified in resolutions of the governing bodies of the local units in the district representing in the aggregate at least two-thirds of the population of the district. For the purposes of this determination, a county shall be as one local unit and the population of the county shall be based upon the inhabitants residing in the unincorporated area of such county as determined by the last decennial census of the United States.

(2) No compensation shall be paid members of a commission. This shall not affect in any way renumeration received by a state or local official who in addition to his responsibilities as a state or local official serves as a member of a commission. All members of a commission may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties as members of the commission.

(3) Commissions shall comply with such other reasonable and necessary general standards, conditions, and criteria as the governor may establish in order to further the purposes of this act, but the governor, in establishing the standards, shall afford all affected parties adequate notice and an opportunity to present relevant information.

Section 5. Powers and Functions of Commissions. A regional planning and development commission shall have the following powers and functions:

(1) Elect its own chairman, and establish rules of procedure, officers, and organization necessary for carrying out its prescribed functions. The commission may authorize, in conformity with established rules, an executive committee or officer of the commission to act for it on all matters. It shall meet at least once a year and shall keep a record of its resolutions, transactions, findings, and determinations which shall be a public record. It shall appoint a director who shall serve at the pleasure of the commission. The director shall be the chief administrative officer of the commission and shall appoint and remove necessary staff subject to such personal policies and standards as the commission may establish. The commission shall fix the compensation of all employees.

(2) Prepare and from time to time revise, amend, extend, or add to plans for development of the district. The plans shall be based on studies of physical, social, economic, and governmental conditions and trends and shall aim to coordinate development of the district in order to promote the general health, welfare, convenience, and prosperity of its people. The plans shall embody the policy recommendations of the commission and shall be fully coordinated with the planning of state agencies and departments engaged in related activities, including [enumerate agencies].

(3) Enter into contracts or agreements with one or more local units and private nonprofit groups within the district to act on their behalf in applying for, administering, and coordinating grants and contracts available for programs authorized by state and federal laws for physical, economic, and human resources planning and development, including but not limited to the Economic Opportunity Act of 1964, the Public Works and Economic Development Act of 1965, and [the Appalachian Regional Development Act of 1965[1]].

[(4) Apply for, administer, and coordinate grants and contracts available for programs authorized by state and federal laws for physical, economic, and human resources planning and development, including but not limited to the Economic Opportunity Act of 1964, the Public Works and Economic Development Act of 1965, and [the Appalachian Regional Development Act of 1965[1]]].

[(5) Sue and be sued; acquire by purchase and condemnation all lands and property rights necessary for its purposes; lease, construct, maintain, and operate the use of facilities requisite to its performance of authorized functions, together with all lands, properties, equipment and accessories for such facilities; and sell or otherwise dispose of any real or personal property acquired and which is no longer required for the purposes of the commission.][2]

(6) Enter into contracts with state agencies, including the state office of economic opportunity, to act on behalf of or assist such agencies in providing technical assistance and other services to communities within its jurisdiction.

(7) Submit and adopt all necessary plans, enter into contracts, accept gifts, grants, and federal funds, prepare and submit budgets, make rules and regulations and do all things necessary for carrying out the purposes of this act.

(8) Exercise its powers jointly or in cooperation with agencies or political subdivisions of this state or any other state, or with agencies of the United States, subject to statutory provisions applicable to interjurisdictional agreements.

Section 6. Financial Support of Commissions. (a) For the purpose of providing funds to meet its expenses, a commission may levy dues on the local units of government within the district. Such dues shall be fair and equitable and shall be based on the population of each local unit as determined on the basis of the latest decennial census.[3] For the purposes of this determination, a county shall be as one local unit and the population of the county shall be based upon the inhabitants residing in the unincorporated area of the county as determined by the last decennial census of the United

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[1] Applicable to the 12 states affected by the Appalachian Regional Development Act.

[2] States may consider it desirable to adopt optional subparagraph (4) in order to empower the commission to receive and administer development grants on its own, rather than on behalf of the local governments pursuant to contracts or agreements. In that case it would also need the instrumental powers provided in bracketed subparagraph (5).

[3] Alternatively, dues may be based on the equalized assessed value of the units of government.

States. By agreement between the commission and a local unit, special additional charges may be levied on such local unit as reimbursement for unique or special services provided by the commission.

[(b) A commission shall annually fix the amount of money necessary to be raised by taxation upon the taxable property in its district, as revenue to meet its expenses and pay its indebtedness for the current fiscal year. Annually before [insert date], the assessor of each [insert name of local unit performing assessment] shall transmit to the commission a written statement showing the taxable value of all property within the jurisdiction of such [local unit performing assessment] which lies within the district. The value shall be ascertained from the [assessment records] for the year, as equalized and corrected by the [state property tax review agency]. On [insert date], the commission shall fix the tax rate, [not to exceed [ ]], based upon the aggregate of equalized values transmitted by the assessors. On [insert date] the tax rate shall be certified to the governing bodies of the counties within the district and taxes shall be levied and collected for the commission in the same manner as taxes levied for county purposes.]

[(c) A commission may set and collect charges for services it supplies and for use of facilities it provides.]

[(d) A commission may issue bonds for any capital purpose of the commission, but a proposition authorizing issuance of bonds shall have been submitted to the electors of the district at a special election and assented to by a majority of the persons voting on the proposition at the election.]

[(e) A commission may levy special assessments payable over a period of not exceeding [ ] years on all property within the district specially benefited by an improvement, on the basis of special benefits conferred, to pay in whole or in part the damages or costs of the improvement.]

[(f) A commission may by majority vote of all the members borrow money from any local unit of government and the local units are hereby authorized to make loans or advances on terms mutually agreed upon by the commission and the legislative bodies of the local units.][1]

(g) To assist financially with the development and coordination of activities of regional planning and development commissions, appropriations are authorized for grants to the commission. The grants shall be administered by the [specify state office[2]] and shall equal [25, 33-1/3, 50] percent of the annual budget of the commission, but not to exceed $[ ] for any commission for any fiscal year. The grants may also be used for the purpose of matching federal programs of assistance for planning and development.

Section 7. Advisory Committees. A commission may appoint advisory committees whose membership may consist of individuals whose experience, training, or interest in one or more

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[1] Alternative subsections (b) – (f) would be appropriate for consideration if the commission is given operating powers by section 5, alternative subsection (4).

[2] Possibilities are the state planning office or office of local affairs.

programs, or representation of particular groups or areas, may qualify them to render valuable assistance to the commission by acting in an advisory capacity or consulting with the commission on its activities. Members of the advisory committees shall receive no compensation for their services, but may be reimbursed for actual expenses incurred in performance of their duties.

Section 8. Report and Evaluation. **(a) A regional planning and development commission shall make an annual report of its activities to the chief executive officers, legislative bodies, and planning agencies of all local units of government within the district, the members of the [legislature] elected from [legislative] districts lying wholly or partially within the district, and the governor.**

(b) The governor shall from time to time evaluate the effectiveness and activities of districts designated and commissions established under this act and may take actions, including the withholding of state funds authorized under subsection 6(g) and the revision of designation of districts required under federal planning and development programs, necessary to accomplish the purposes of this act. The governor shall afford the affected parties a full opportunity to present their views and shall make a full and prompt report to the legislature of actions taken.

Section 9. Separability. **[Insert separability clause.]**

Section 10. Effective Date. **[Insert effective date.]**

31-34-00

COUNTY[#] POWERS IN RELATION TO LOCAL PLANNING AND ZONING ACTIONS

The benefits of sound city planning and zoning have been widely recognized by public officials throughout the country. Much of the development taking place in urban areas today is influenced by local plans and their related zoning ordinances, subdivision regulations, and capital improvement programs. In metropolitan areas, however, much of this is planning for individual cities rather than effective planning for the entire urban area. What is missing is coordination of those municipal planning and zoning actions that have an effect beyond local boundaries.

The Advisory Commission on Intergovernmental Relations pointed out one of the consequences of municipal planning and zoning action without reference to neighboring communities and to the urban area as a whole in its 1963 report, *Performance of Urban Functions: Local and Areawide.*

> . . . the economic foundation of an entire metropolitan area depends upon the way in which land is zoned and used in each of its component communities. For example, insufficient land for industry and commerce will discourage development of these enterprises, while overzoning for commercial or industrial land may cause an unhealthy rivalry among individual communities which results in poor allocation of economic resources among them. Because local government relies so heavily upon the property tax, the chief obstacle to sound areawide planning is the competition among municipalities for land use developments which are productive of large tax revenues. The rationale of many zoning ordinances lies in fiscal competition rather than desirable spatial arrangement of uses. This kind of policy is self-defeating, and may result in a reduction of total (metropolitan) economic resources.

Another problem is stated in a more recent report, *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs.* In many instances, municipal development policies and regulations in metropolitan areas tend to discriminate against groups of persons and certain types of land uses to the disadvantage of residents of the whole region. The responsibility for areawide coordination of planning and zoning matters, therefore, should rest with larger units of government encompassing most, if not all, of the metropolitan area, with sufficient legal power to participate in development decisions and at the same time represent a diversity of viewpoints found in the community. In many places, this function could appropriately be lodged within the county government.

The suggested legislation contains a threefold approach to county-municipal planning and zoning relationships in metropolitan areas. Under the act, the county (a) reviews and approves certain planning and zoning actions of existing municipalities between 5,000 and 30,000 population; (b) exercises its planning and zoning authority in all existing municipalities of less than 5,000 population; and (c) exercies its planning and zoning authority in all municipalities incorporated within the county after the passage of the act until the population of the municipality exceeds 30,000 persons within its territory.

In the draft bill, a procedure is established for metropolitan areas of the state for county review and approval of certain local planning and zoning actions that have an effect beyond local boundaries or that affect development essential to countywide needs. The principal of county review and approval of local development actions has been adapted in part from referral procedures granted counties in New York under Chapter 1041, Laws of 1960, State of New York, and Chapters 822 and 823, Laws of 1961, State of New York. Precedent for the removal of planning and land use control authority from small municipalities and vesting such powers in the county may be found in Kentucky under Chapter 139, Session Laws of 1964, Commonwealth of Kentucky. This legislation subsequently was repealed by a 1966 enactment (H.B. 390) but Jefferson County (Louisville) continues to exercise planning and land use control

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[#] Some states may prefer to use regional agencies for this purpose.

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powers in small communities. The State of Indiana has gone even further in Title 53, Chapter 9 of the Indiana Annotated Statutes by abolishing all existing city and county planning commissions and boards of zoning appeals and transferring all planning and land use control powers and duties to the Metropolitan Plan Commission, the Metropolitan Board of Zoning Appeals, and the county legislative body in the Indianapolis-Marion County metropolitan area.

The draft bill provides that certain planning and zoning actions of municipalities from 5,000 to 30,000 population must be submitted to the county for approval with respect to consistence with countywide planning objectives, including discouragement of exclusive or fiscal zoning practices. The county would not be concerned with all municipal planning and zoning matters, for many have little significance insofar as their effect outside municipal boundaries is concerned. The proposed legislation, therefore, does not remove the power to zone or plan from these municipalities; rather, it subjects certain municipal actions to an approval procedure by a larger unit of government and, in specified instances, review by abutting municipalities.

The draft bill authorizes the county to review all three major regulatory measures of local planning – zoning, subdivision regulation, and the official map – provided that the county has adopted, approved, or filed a comprehensive plan or development policy document. The municipalities must refer any proposals to the county that would have the effect of changing the types of use of real property bordering major county or state highways and parks, decreasing the front yard setback or minimum lot width of any property abutting any such county or state highway or park, connecting any new street into any such highways, connecting new drainage lines into existing channel lines, and, finally, reducing residential densities to less than three families per acre. These categories will include virtually all local planning or zoning actions likely to have an effect beyond the corporate limits.

The county may make recommendations to the municipality on a referral proposal. The municipality may not act contrary to the county recommendations unless it adopts a resolution setting forth its reasons for such action and files the resolution with the county planning agency. The county may then review the local resolution and reverse the municipality if, in its judgment, the proposal still does not meet countywide objectives as set forth in the county plan. The draft bill assumes that municipal or county action is subject to judicial review.

The county must adopt specific policies and standards to guide its review of local actions. The language of section 5 recognizes that while local desires should not obstruct essential needs of the county, neither should local interests be arbitrarily overridden by a higher unit of government if countywide needs can be satisfied in a manner compatible with the interests of the locality.

The suggested legislation also contains provisions to maximize intermunicipal coordination of planning and zoning activities. Notice of certain municipal planning and zoning actions on real property within 500 feet of any abutting municipality must be sent to the affected municipality. The abutting municipality may recommend changes or modifications of the proposal. The municipal agency having jurisdiction may override changes suggested by the abutting municipality by a majority vote or by adoption of a resolution setting forth its reasons for contrary action. The resolution must be filed with the clerk of the abutting municipality and with the county planning agency.

As pointed out by the Council of State Governments in its report, *State Responsibility in Urban Regional Development,* the major problem in planning for future development –

> . . . is not the lack of planning that is being done, but the *quality* of planning that is required to guide future urban development effectively. . . . Volunteer public officials in too many areas are trying to cope with complex planning problems without any guidance. The rapid pace of urban development has swamped them in spite of their efforts to keep up.

Few small and newly incorporated municipalties have the technical and financial resources to provide continuing attention to development problems. A larger unit of government, however, is better equipped to provide such needed attention and technical skills. The draft bill, therefore, authorizes counties to exercise their planning and zoning power in all existing municipalities of less than 5,000 population and in all future incorporations until the municipality reaches 30,000 population. The suggested legislation presumes that municipalities of 30,000 or more persons are large enough to apply adequate financial and competent technical resources to development problems. Development decisions, furthermore, are less likely to be arbitrary as the larger community contains a greater diversity of interests more representative of areawide needs.

The draft bill is primarily concerned with a review and approval procedure. Many state legislatures may find it desirable, in addition, to redefine existing statutory powers and duties of county or areawide planning agencies. The legislature should provide clear direction for the planning agency to concern itself with matters of county or areawide significance rather than local concerns that have no areawide repercussions. It may be desirable to amend the general planning enabling statutes, therefore, to reflect this objective. The draft legislation for Metropolitan Area Planning Commissions (31-32-00), may be helpful (see especially section 6, *Power and Duties*).

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion:
"An act prescribing the planning and zoning powers and duties of counties[1]
in metropolitan areas in relation to municipalities of the county."]

(Be it enacted, etc.)

Section 1. Purpose. It is in the public interest that within metropolitan areas certain classes of proposed municipal planning and zoning actions be subject to review and approval by the county planning agency for the county in which such municipality is located; that abutting municipalities be informed, in certain instances, of such proposed actions in order to aid in coordinating planning and zoning actions among municipalities; that the planning and zoning authority of certain small municipalities and newly incorporated municipalities be exercised by the county because of the lack of adequate technical and administrative resources in such municipalites to plan effectively for future development; and that counties exercise such planning and zoning authority by applying such pertinent intercommunity and countywide considerations as may be set forth within the [adopted, approved, or filed] county comprehensive plan or development policy document.

Where a county has [adopted, approved, or filed] a comprehensive plan or other overall development policy document, it is the purpose of this act to secure conformity to such plan notwithstanding any contrary municipal policies that may be in conflict with such plan.

Section 2. Scope of this Act. This act shall be effective within metropolitan areas of the state.

Section 3. Definitions. As used herein:

(1) "Metropolitan area" is an area designated as a "standard metropolitan statistical area" by

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[1] Some states may prefer to use regional agencies for this purpose.

statistical area" by the U. S. Bureau of the Census.[1]

(2) "Municipality" shall mean any [city, town, village, or borough], but not a county.

Section 4. Municipal Planning and Zoning Actions to be Submitted to the County; Action by the County. (a) Any municipality of less than [30,000] and more than [5,000] population, as determined by the latest official census, located within a metropolitan area and in a county that has an [adopted, approved, or filed] county comprehensive plan or overall development policy document shall give notice to the county of any proposal which, if adopted, would have the result of (1) changing the types of uses permitted on property abutting any federally aided or state highway, parkway, or throughway, or any county road or parkway or federal, state, or county park within the municipality, (2) decreasing the required minimum setback or the minimum frontage or average width of any property abutting any federal or state highway, parkway, or throughway, or any county road or parkway or federal, state, or county park within the municipality, (3) connecting any new street directly into any federal, state, or county highway, parkway, throughway, or road, (4) connecting any new drainage lines directly into any channel lines as established by the county, or (5) reducing permitted residential density to less than [three] families per acre. The notice shall be mailed by the municipality to the county at least [15] days prior to any hearing or other action scheduled in the municipality to consider the proposal.

(b) If the county to which referral is made [or an authorized agent of the county] determines that the grant or denial of any proposal referred to in subsection (a) hereof would affect any county policy pursuant to section 5 of this act, it shall report its recommendations thereon to the referring municipal agency, accompanied by a full statement of the reasons for the recommendation. If the county fails to report within [15] days after receiving notice of the hearing, the municipal body having jurisdiction to act may do so without such report.

(c) The municipality having jurisdiction shall act in accordance with the recommendations of the county unless the municipality adopts a resolution fully setting forth the reasons for contrary action. The resolution shall be filed with the county within [7] days from the adoption of the resolution. The municipal action shall not become effective until [30] days have elasped from the date the resolution is filed.

(d) Notwithstanding any resolution or action taken pursuant to subsections (b) and (c) hereof, the county within the [30] day period may review the municipal action and reverse its action by resolution of the [county governing body] upon specific findings of fact that the municipal action is not in accordance with the material provisions of the [adopted, approved, or filed] county comprehensive plan or overall development policy document. The comprehensive plan or development policy shall contain standards as set forth in section 5 of this act.

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[1] Particular states may find it necessary for constitutional reasons or otherwise desirable to apply a somewhat different definition, tailored to their circumstances, as some Bureau of Census designated "metropolitan areas" include counties primarily oriented to rural rather than urban problems. For example, other quantitative factors may be used in a metropolitan area definition, such as population density expressed in a number of persons per square mile, or percentage of county residents employed in the central city.

Section 5. Standards and Policies for County Review. (a) In the exercise of power conferred by this act, the county shall prepare and adopt standards and policies as part of its comprehensive plan or overall development policy document which takes into account the existing and future areawide needs with sufficient specificity that they may be used:

(1) by municipalities located within the county as a guide to municipal action that may affect development outside its boundaries;

(2) by the courts in reviewing the decisions of government officials and agencies rendered pursuant to this act.

(b) County review of municipal planning and zoning actions, as set forth in section 4 hereof, shall be governed by the adoption by the county of specific policies and standards to:

(1) assure that a wide range of housing choices and prices is available to residents of the county;

(2) assure that regulations and actions affecting the location of commercial and industrial development, hospitals, educational, religious, and charitable institutions take into consideration countywide needs.

(c) If the proposed municipal action excludes types of development set forth in subsection (b) hereof, the county shall declare such exclusionary action unreasonable if it is not:

(1) necessary to public health or safety; or

(2) necessary to the preservation of the established physical character of the area affected; or

(3) specifically authorized in the county comprehensive plan or other official development policy document.

Section 6. Municipal Planning and Zoning Actions to be Submitted to Contiguous Municipalities; Action by Contiguous Municipalities. (a) Each municipality in the county shall give notice of any action scheduled in the municipality in connection with: (1) changing the types of uses permitted of any property located within five hundred feet of any contiguous municipality [in the county]; (2) a subdivision plat relating to land within five hundred feet of any contiguous municipality [in the county]; or (3) the proposed adoption or amendment of any official map, relating to any land within five hundred feet of any contiguous municipality [in the county], to such municipality. The notice shall be given at least [15] days prior to any action to the clerk of the contiguous municipality affected. The action shall be deemed sufficient notice under this or any other law requiring notice of the action.

(b) The municipality to which referral is made [or an authorized agent of the municipality] may file a memorandum of its position. If the municipality fails to report within the period of [15] days after receiving notice of the hearing, the municipality having jurisdiction to act may do so without the report. If the contiguous municipality disapproves the proposal, or recommends changes or modifications thereof, the municipal agency having jurisdiction shall not act contrary to the disapproval or recommendation except by a majority vote of all the members thereof and after the adoption of a resolution fully setting forth the reasons for its contrary action. Copies of the resolution shall be filed with the clerk of the contiguous municipality and with the county.

Section 7. County Planning and Zoning Authority in Small Municipalities. (a) Each county located in a metropolitan area shall exercise planning and zoning authority for:

(1) all municipalities within the county having a population of less than [5,000] as determined by the latest official census, but existing plans and planning and zoning ordinances shall remain in effect until altered by the county; and

(2) all municipalities hereinafter incorporated within the county until the population of a municipality exceeds [30,000] persons as determined by the latest official census within its territory, but county authority shall continue until the municipality adopts a [resolution] [ordinance] whereby the municipality assumes planning and zoning authority and provides for the exercise thereof in conformance with [cite appropriate planning and zoning enabling legislation].

County authority shall be exercised in accordance with, and in a manner prescribed by, [cite statute granting authority for counties to exercise planning and zoning authority].

(b) If any municipalities referred to in subsection (a) hereof are located in more than one county, the county having the larger population shall exercise planning and zoning authority within those municipalities.[1]

Section 8. County Zoning Regulations Within Municipal Jurisdictions. The county zoning ordinance may regulate territory within the zoning jurisdiction of any municipality whose governing body, by resolution, agrees to such regulation if the county governing body, by resolution, agrees to exercise such authority. The municipal governing body may, upon one year's written notice, withdraw its approval of the county zoning regulations and those regulations shall have no further effect within the municipality's jurisdiction.

Section 9. Separability. [Insert separability clause.]

Section 10. Effective Date. [Insert effective date.]

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[1] When using this provision, states will want to review other statutory requirements applicable to municipalities in more than one county to assure that no statutory conflicts exist.

OFFICIAL MAP[1]

The adoption of an official map specifically identifies and maps future locations for streets, public facilities, parks, playgrounds, and other public uses and officially reserves the sites for future public acquisition. It is a major tool to assist local governments in guiding urban development and providing adequate services at a reasonable cost. Used in concert with other measures as part of an overall urban development program, it provides for the identification of areas slated for development in the near future. By prohibiting or restricting development within the areas needed for public uses, it assures that where negotiated settlements are not possible, condemnation proceedings can be used to avoid costly acquisition.

Over 40 States have some type of official map legislation on their books, but in only 26 does it include power actually to reserve land for streets and in only 13 to reserve land for park and playground areas. In the other cases, an official map is merely a specific indication of where public uses are intended and serves no other legal purpose. Since such a limited purpose is already served by general physical development plans, it is vital that the official map legislation include the power actually to reserve land in accordance with the map.

To avoid adverse court decisions on due process grounds, it is important that the absolute reservation not extend for an indefinite period. In the draft legislation, this is accomplished by requiring the initiation of purchase proceedings by the local government within a specified period after the owner's announcement that he intends to build, subdivide or otherwise develop the land covered by the reservation. Unless the locality purchases the reserved property or begins condemnation proceedings within that time, the property would then be free of the official map reservation.

The legislation is drawn to allow for adoption of official maps by both counties and municipalities (cities, villages, boroughs, towns). Section 1 states the legislative purpose and Section 2 defines terms. Section 3 is the general grant of power for adoption or amendment of the official map. Section 4 sets forth the procedure for adoption and amendment by the governing body, including the holding of a public hearing.

Section 5 provides that approval of plats pursuant to subdivision regulation legislation constitutes an amendment to the official map. Section 6 makes clear that adoption of the official map in itself does not constitute the actual taking of property, the establishment of a street, or the commitment of the locality to improve or maintain the land affected; it is solely a reservation of the land for possible future acquisition or development. Some states may wish to provide that assessment of property for taxation shall reflect, at the earliest practicable time, any change in market value which results from the reservation of the property for future public use.

Section 7 is designed to protect the integrity of the map by denying a building permit for construction within areas reserved, but provides for appeal in hardship cases to the governing body, and then appeal to the courts from an adverse decision. Section 8 establishes the time limit for action on reservations for future taking.

Section 9 requires other State and local agencies to give the governing body advance notice of intention to commence construction within the reserved lines of the official map. The purpose is to provide time for negotiation on possible ways of minimizing the encroachment on the mapped areas.

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[1] This draft bill incorporates one of several approaches suggested in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth*, as measures for the States to consider in implementing policies for urban growth and new community development.

Section 10 enables the governing body to delegate its authority to negotiate for releases of claims for damages or compensation for reservations of land.

Section 11 sets forth the rules for coordinating official maps adopted by municipalities with those adopted by counties. County official maps shall be in effect in all parts of the county not subject to municipal official maps. In addition, within municipalities having official maps, county maps shall prevail with respect to county streets, watercourses, parks, open space, and school sites. Provision is made for counties and municipalities to notify each other as to adoption or amendment of official maps.

Section 12 authorizes municipalities to extend their official maps into unincorporated territory outside their boundaries which is not subject to a county official map. If a county subsequently adopts an official map for such extraterritorial areas, the municipal official map is superseded. This provision is consistent with other ACIR draft legislation authorizing municipalities to exercise extraterritorial planning, zoning, and subdivision regulation in unincorporated areas not already subject to similar regulation by the county government.

The draft statute is a modification of the official map article of the Pennsylvania municipalities planning code, Act 247, Laws 1968.

Suggested State Legislation

[Title should conform to State requirements. The following is a suggestion: "An Act to Authorize Municipalities to Adopt Official Maps"]

(Be it enacted, etc.)

Section 1. Purpose. It is the purpose of this act to promote the public health, safety, and general welfare, by encouraging orderly growth and development within the counties, cities, towns and villages of this state through the reservation of public street rights of way and control of access thereto, drainage rights of way, public utility rights of way, public parks and playgrounds, and sites for public buildings.

Section 2. Definitions. As used in this act:

(1) "Municipality" means an incorporated city, town, or village, whether incorporated under general or special act.

(2) "Governing body" means the chief legislative or governing body of any county, city, town, or village.

(3) "Plat" means the map or plan of a subdivision or land development.

(4) "Public grounds" includes (i) parks, playgrounds, and other public areas for active or passive recreation; and (ii) sites for schools, sewage treatment, refuse disposal, and other publicly owned or operated facilities.

(5) "Street" includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct, and any other ways used or intended to be used by vehicular traffic or pedestrians.

(6) "Structure" means any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to land.

(7) "Subdivision" has the meaning set forth in [cite subdivision regulation statute].

Section 3. Grant of Power. **The governing body of each [municipality, county] may make or cause to be made surveys of the exact location of the lines of existing and proposed public streets, watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings or closing of same, for the entire [municipality, county] and, by ordinance, adopt such surveys as the official map, or part thereof, of the [municipality, county]. The governing body, by amending ordinances, may make additions or modifications to the official map, or part thereof, by adopting surveys of the exact location of the lines of the public streets, watercourses or public grounds to be so added or modified and may also vacate all or part of any existing or proposed public street, watercourse or public ground contained in the official map.**

Section 4. Adoption of the Official Map; Amendments. **Prior to the adoption of any survey of existing or proposed public streets, watercourses or public grounds as the official map, or part thereof, or any amendments to the official map, the governing body, after giving public notice, shall hold a public hearing thereon. Public notice shall be given not more than [30] days and not less than [14] days in advance of the public hearing. The notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality. It shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing.**

Section 5. Effect of Approved Plats on Official Map. **After adoption of the official map, or part thereof, all streets, watercourses and public grounds on final, recorded plats which have been approved as provided by [cite subdivision regulation statute] shall be deemed amendments to the official map. Notwithstanding any of the other terms of this act, no public hearing need be held or notice given if the amendment of the official map is the result of the addition of a plat which has been approved as provided by [cite subdivision regulation statute].[1]**

Section 6. Effect of Official Map on Mapped Streets, Watercourses and Public Grounds. **The adoption of any street or street lines as part of the official map shall not, in and of itself, constitute or be deemed to constitute the opening or establishment of any street nor the taking or acceptance of**

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[1] This assumes that the subdivision regulations require adequate public notice and hearing for approval of plats.

any land for street purposes, nor shall it obligate the [municipality, county] to improve or maintain any such street. The adoption of proposed watercourses or public grounds as part of the official map shall not, in and of itself, constitute or be deemed to constitute a taking or acceptance of any land by the [municipality, county].

Section 7. Structures in Mapped Streets, Watercourses and Public Grounds. No building permit shall be issued for any structure within the lines of any street, watercourse or public ground shown or laid out on the official map. No person shall recover any damages for the taking for public use of any structure or improvements constructed within the lines of any street, watercourse or public ground after the same shall have been included in the official map, and any such structure or improvement shall be removed at the expense of the owner. However, when the property of which the reserved location forms a part, cannot yield a reasonable return to the owner unless a permit is granted, the owner may apply to the governing body for the grant of a permit to so build. Before granting any permit authorized in this section, the governing body shall give public notice and hold a public hearing at which all parties in interest shall have an opportunity to be heard. A refusal by the governing body to grant the permit applied for may be appealed by the applicant to the [appropriate court] in the same manner, and within the same time limitation, as is provided for zoning appeals by [cite appropriate statute]. Final decision of each appeal shall be made by the court, or a judge thereof, considering the record and the findings of fact made by the governing body as supplemented or replaced by findings of fact made by the court.

Section 8. Time Limitations on Reservations for Future Taking. The governing body may fix the time for which streets, watercourses and public grounds on the official map shall be deemed reserved for future taking or acquisition for public use. However, the reservation for public grounds shall lapse and become void [one year] after an owner of such property submits a written notice to the governing body announcing his intentions to build, subdivide or otherwise develop the land covered by the reservation, or makes formal application for an official permit to build a structure for private use, unless the governing body acquires the property, or begins condemnation proceedings to acquire the property before the end of the [one year] period.

The governing body may withhold issuance of any permit to build a structure within any land area so reserved for a period of up to [one year] following application therefor, and it may withhold approval of any subdivision plan affecting any area reserved for a period of up to [one year] following submission of the plan for approval. Any withholding period so established shall be valid, notwithstanding any other provisions contained in ordinances or resolutions or in statutes of the state requiring approval or disapproval of such applications within a lesser time period.

Section 9. Construction by Other Governmental Units. Any state agency or political subdivision intending to construct a structure within the lines of any street, watercourse or public ground included in the official map shall give the governing body written notice of such intention at least [one year] in advance of the date the construction is planned to start.

Section 10. Release of Damage Claims or Compensation. The governing body may designate any of its agencies to negotiate for or secure from the owner of land whereon reservations are made, releases of claims for damages or compensation for such reservations, or agreements indemnifying the governing body from such claims by others, which releases or agreements when properly recorded shall be binding upon the successor in title.

Section 11. Relationship of County and Municipal Maps. When any county has adopted an official map in accordance with the terms of this act, a certified copy of the map and the ordinances adopting it shall be sent to every municipality within the county. All amendments shall be sent to the aforementioned municipalities. The map or amendments shall not take effect until [30] days after receipt of said notification and map or amendments by the municipalities. The powers of the governing bodies of counties to adopt, amend and repeal official maps shall be limited to land and watercourses in those municipalities wholly or partly within the county which have no official map in effect at the time an official map is introduced before the governing body of the county, and until the municipal official map is in effect. The adoption of an official map by any municipality whose land or watercourses are subject to county official mapping shall act to repeal the county official map within the municipality adopting such ordinance. Notwithstanding any of the other terms or conditions of this section the county official map shall govern as to county streets, watercourses and public grounds even though such streets, watercourses or public grounds are located in a municipality which has adopted an official map. When a municipality within a county which has adopted an official map also adopts an official map, a certified copy of the map, the ordinance adopting it and any later amendments shall be forwarded to the county planning agency, if such an agency exists, and to the governing body of the county. Additionally, if any municipality adopts an official map, or amendment thereto, that shows any street intended to lead into any adjacent municipality, a certified copy of said official map or amendment shall be forwarded to the adjacent municipality.

Section 12. Extraterritoriality. The power of a municipality to establish an official map may attach, extend to, and include all territory within [   ] miles of its corporate limits and not within the corporate limits of any other municipality, provided, however, that no municipality shall exercise such power outside its municipal boundaries without first transmitting to the governing body or bodies of the county or counties affected at least one copy of the official map proposed to be applied thereto, and the map shall not take legal effect until [30] days after the receipt of the notification and map by the governing authority or authorities. At any time the governing body of a county may supersede the jurisdiction and map in the area by the adoption of an official map.

Section 13. Separability. (Insert separability clause.)

Section 14. Effective Date. (Insert effective date.)

PLANNED UNIT DEVELOPMENT[1]

State legislative authorization for local governments to adopt "planned unit development" regulations is one approach to implementing State and local urban growth policies. Such legislation is particularly useful for encouraging local land-use and development programs that emphasize large-scale development.

The major distinguishing characteristics of the planned unit development technique (PUD) are that it combines zoning, subdivision control and other land-use procedures to allow a developer more design flexibility while replacing the traditional, rigid, limited-use zoning districting standards with broad general standards and with detailed administrative review and approval of specific plans. PUD is particularly appropriate for application in developing areas. Lot-by-lot regulation under existing zoning procedures may be adequate for controlling development in built-up areas, since it is designed primarily to prevent the use of one lot from injuring the present or future use of an adjoining lot. Such regulation is probably inappropriate and unduly restrictive, however, for areas where development of all lots occurs at approximately the same time and is done by a single party. The PUD approach allows the use of innovative, efficient, and topographically-suited site and building patterns including mixed housing types and mixed uses where these can be accomplished in a healthy, wholesome, and attractive manner.

About half a dozen States specifically authorize the adoption of the PUD approach or one of its variants. In a number of other States existing zoning, subdivision control, and other land use and development regulations appear to permit the use of the PUD on the initiative of at least some of the local governments.

The following draft legislation is based in large part on Chapter 61, Laws 1967 of New Jersey, and a proposal in the 1968 Virginia General Assembly (Senate Bill No. 455.) These closely follow a model statute contained in a study prepared for the Urban Land Institute and the National Association of Home Builders in 1965.[2]

The draft legislation supplements municipal zoning and subdivision regulation ordinances. Once adopted, the legislation can be codified as part of the enabling legislation on planning, zoning, and subdivision regulation. In that form, the specific PUD provisions might well be covered in existing planning, zoning, and subdivision legislation.

While the statute gives municipalities authority to establish PUDs, it can be adapted to make the authority available to counties in those States where counties exercise zoning and subdivision regulation control.

Section 1 states the purposes, including the encouragement of new communities, innovation in design and layout, and more efficient use of land. Section 2 establishes the procedure whereby a municipality may use the power given it under the act. Section 3 deals with definitions.

[1] This draft bill incorporates one of several approaches suggested in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth,* as measures for States to consider in implementing policies for urban growth and new community development.

[2] Urban Land Institute, *Legal Aspects of Planned Unit Residential Development,* Technical Bulletin 52, A Land Use Study prepared for National Association of Home Builders and Urban Land Institute (1965).

Section 4 requires the municipal ordinance to set forth standards and conditions by which a proposed PUD shall be evaluated, and permits the municipal instrumentality to issue rules and regulations to supplement the standards and conditions. Both the standards and conditions and the rules and regulations must be consistent with prescribed requirements as to permitted uses, residential density, common open space, minimum number of dwelling units, public facilities, and criteria by which the design, bulk and location of buildings shall be evaluated. All standards and conditions must be set forth in the ordinance with sufficient certainty to protect the public and provide reasonable yardsticks by which specific proposals for a PUD can be measured. Permitted uses include various kinds of dwelling units, nonresidential uses, educational facilities, and industrial uses and buildings. Residential density requirements are permitted to vary over the various geographic sections of the PUD; in fact, they are expected to differ from density standards under the municipality's conventional zoning ordinance. The variation is subject, however, to an assurance that both the overall density and the quantity of open space is maintained. Thus, the flexibility desired must be balanced against protection of the public interest.

Subsection (c) on common open space deals in detail with public dedication, failure of a private organization to maintain the open space properly, and finally the cost of maintenance.

Subsection (d) requires the property to contain a minimum number of dwelling units or commercial or industrial uses. Some minimum must be established so that the municipality is not overburdened with proposed PUDs dealing with small pieces of property that really resemble the traditional "variance" and are better handled by a variance under the traditional provisions of the zoning ordinance.

Subsection (e) incorporates the municipality's authority to establish standards governing public facilities that appear under the conventional subdivision statute. Since these customary standards assume uniform residential type and density, however, this paragraph permits the standards for a PUD to vary from those standards, provided that limits are set on the degree of modification.

Section 5 emphasizes that the residents of the development and the public both have a mutual interest in preservation of the plan and in necessary modifications of the plan. It deals with the delicate balance between the respective rights of the municipality and of the residents to enforce and to modify provisions of the plan. The four paragraphs preserve the traditional relationship between public regulations and private agreements affecting land use.

Most of the remaining sections of the statute deal with procedural steps in the application for tentative and final approval of the PUD and judicial review. Some States may consider it desirable to leave these procedures – with the exception of judicial review – to be spelled out by ordinance rather than statute. In that case the applicable remaining sections could be used in drafting a local ordinance.

Section 6 vests decision-making on PUDs in one administrative agency. There is no reason why the same procedure should not be followed in traditional development, instead of the usual scattering of responsibility, but in the case of planned developments the need for consolidation is absolutely essential. The requirement in subsection (b) that a copy of the plan and application be filed with the State planning agency recognizes the State government's basic interest in urban development.

Subsection (d) is intended to forbid municipal requirements for information which is irrelevant and often costly at a stage when the developer does not have any official indication of attitude toward his proposal. The provision in subsection (e) that the developer indicate in writing the reasons a PUD would be in the public interest and consistent with municipal objectives should induce him to make a complete and logical presentation of the plan at the required public hearing. In addition, the required findings (Section 8) by the municipality may thereby be more responsive to the developer's position.

Section 7 requires a public hearing on the application for a PUD, following the procedure required for amendments to a zoning ordinance, except that special notice must be given to adjoining municipalities where the proposed development is near to them; and to adjoining municipalities, the county planning agency and the State planning agency when the development exceeds a certain minimum size.

The main purpose of Section 8 is to require the municipality to state its reasons for approving or disapproving an application for tentative approval. If pre-regulation (i.e., precise controls) is incompatible with flexibility, then the best method for testing the quality of fairness and equal treatment at the local level is to compel the local authority to explain its decision. In addition, this section recognizes that approval with conditions is likely to be the most frequent result and the mechanics of such an equivocal posture have to be provided in the statute.

Section 9 delineates the rights and duties of the developer and the municipality for the period between tentative approval and final approval. The developer is assured that the municipality will not change its mind pending his request for final approval.

Section 10 attempts to deal with the critical problem of changes occurring in the plan between tentative and final approval. The developer is entitled to know what to expect if he does make a substantial change; neighboring property owners are entitled to know if a substantial change is contemplated at the time of final approval. The municipality needs a guide to proper action so that it cannot be charged with quibbling in order to avoid a decision on final approval. Although the definition of "substantial compliance" is designed to specify the limits of modification without further hearing, the developer must still show that his suggested variations are necessary.

Section 11 provides that any decision of the municipality on the granting or modification of a tentative approval of a plan is subject to the same judicial review as in the case of individual rezoning applications.

Suggested State Legislation

[Title should conform to State requirements. The following is a suggestion: "An Act authorizing municipalities to provide for planned unit developments."]

(Be it enacted, etc.)

Section 1. Purposes. The purposes of this act are to:

(1) Further the public health, safety, and general welfare in an era of increasing urbanization and of growing demand for housing of all types and design;

(2) Provide for necessary commercial and educational facilities conveniently located to such housing;

(3) Provide for well located, clean, safe, pleasant industrial sites involving a minimum of strain on transportation facilities;

(4) Encourage the planning and building of new communities incorporating the best features of modern design;

(5) Insure that the provisions of [cite appropriate statutes], which direct the uniform treatment of dwelling type, bulk, density and open space within each zoning district, shall not be applied to the improvement of land by other than lot by lot development in a manner that would distort the objectives of [that statute];

(6) Encourage innovations in residential, commercial and industrial development and renewal so that the growing demands of the population may be met by greater variety in type, design and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings, so that greater opportunities for better housing and recreation, shops and industrial plants conveniently located to each other may extend to all citizens and residents of this state;

(7) Encourage a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may enure to the benefit of those who need homes;

(8) Lessen the burden of traffic on streets and highways;

(9) Provide a procedure which can relate the type, design and layout of residential, commercial and industrial development to the particular site and the particular demand for housing and other facilities at the time of development in a manner consistent with the preservation of the property values within established residential areas; and

(10) Insure that the increased flexibility of substantive regulations over land development authorized herein is subject to such administrative standards and procedures as shall encourage the disposition of proposals for land development without undue delay.

Section 2. Application of Statute. All municipalities are granted the powers set forth in this act, but these powers shall be exercised only by a municipality which enacts an ordinance that:

(1) Refers to this act;

(2) Includes a statement of objectives for planned unit development, as herein defined;

(3) Designates the local agency which shall exercise the powers of the municipal authority, as herein defined;

(4) Sets forth the standards for a planned unit development consistent with the provisions of section 3 hereof; and

(5) Sets forth the procedures pertaining to the application for, hearing on and tentative and final approval of a planned unit development, consistent with sections 5 through 9 of this act.

The enactment of an ordinance pursuant to the powers granted herein, and the enactment of an amendment thereto, shall be in accordance with the procedures required for the adoption of an amendment to a zoning ordinance as provided in [cite appropriate statute].

Section 3. Definitions. As used in this act:

(1) "Common open space" means a parcel or parcels of land or an area of water, or a combination of land and water within the site designated for a planned unit development, and designed and intended for the common use or enjoyment of residents and owners of the planned unit development. Common open space may contain complementary structures and improvements necessary and appropriate for the benefit and enjoyment of residents and owners of the planned unit development.

(2) "Landowner" means the legal or beneficial owner or owners of all of the land proposed to be included in a planned unit development. The holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land, shall be deemed to be a landowner for the purposes of this act.

(3) "Municipal authority" means the municipality's legislative body or any officer, board or other body designated by it to administer the ordinance adopted pursuant to this act.

(4) "Plan" comprises the provisions for development of a planned unit development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, private streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of the plan" shall mean the written and graphic materials referred to in this definition.

(5) "Planned unit development" means an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, and commercial and industrial uses, if any, the plan for which does not correspond in lot size, bulk or type of dwelling or commercial or industrial use, density, lot coverage and required open space to the regulations established in any one or more districts created, from time to time, under the provisions of a municipal zoning ordinance enacted pursuant to [cite appropriate statute].

(6) "Statement of objectives for planned unit development" means a written statement of the goals of the municipality with respect to land use for various purposes, density of population, direction of growth, location and function of streets and other public facilities, and common open space for recreation or visual benefit, or both, and such other factors as the municipality may find relevant in determining whether a planned unit development shall be authorized.

Section 4. Standards and Conditions for Planned Unit Development. Every ordinance adopted pursuant to the provisions of this act shall set forth the standards and conditions by which a proposed planned

unit development shall be evaluated. The municipal authority may prescribe, from time to time, rules and regulations to supplement the standards and conditions set forth in the ordinance provided (1) the rules and regulations are not inconsistent with the ordinances, (2) the rules and regulations are placed of public record, and (3) any amendment or change of the rules and regulations shall not apply to any plan for which an application for tentative approval has been made prior to the placing of public record of the amendment or change. The standards and conditions and all supplementary rules and regulations established for a particular planned development authorized pursuant to the ordinance shall not be inconsistent with the following provisions:

(a) Permitted uses may include and shall be limited to (1) dwelling units in detached, semi-detached, or multi-storied structures, or any combination thereof; (2) any nonresidential use, to the extent such nonresidential use is designed and intended to serve the residents of the planned unit development, and such other uses as exist or may reasonably be expected to exist in the future; (3) public and private educational facilities; and (4) industrial uses and buildings. An ordinance may establish regulations setting forth the timing of development among the various types of uses and subgroups thereunder, and may specify whether some nonresidential uses are to be built before, after or at the same time as the residential uses.

(b) (1) Standards governing the density, or intensity of land use, shall take into account that the density, or intensity of land use, otherwise allowable on the site under the provisions of a zoning ordinance previously enacted pursuant to [cite zoning enabling act] may not be appropriate for a planned unit development. The standards may vary the density, or intensity of land use, otherwise applicable to the land within the planned unit development in consideration of (i) the amount, location and proposed use of common open space, (ii) the location and physical characteristics of the site of the proposed planned unit development, and (iii) the location, design and type of dwelling units and other uses.

(2) In the case of a planned unit development proposed to be developed over a period of years, such standards may, to encourage the flexibility of housing density, design and type, authorize a deviation in each section to be developed from the density, or intensity of use, established for the entire planned unit development. The ordinance may authorize the municipal authority to allow for a greater concentration of density, or intensity of land use, within some section or sections of the development, whether it be earlier or later in the development, than upon others. The ordinance may require that the approval by the municipal authority of a greater concentration of density or intensity of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by a grant of

easement or by covenant in favor of the municipality, provided that such reservation shall, as far as practicable, defer the precise location of the common open space until an application for final approval is filed, so that flexibility of development which is a prime objective of this act can be maintained.

(c) The standards shall require that any common open space resulting from the application of standards for density, or intensity of land use, be set aside for the use and benefit of the residents in such development and shall include provisions by which the amount and location of any common open space shall be determined and its improvement and maintenance for common open space use be secured, subject, however, to the following:

(1) The ordinance may provide that the municipality may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the ordinance shall not require, as a condition of the approval of a planned unit development, that land proposed to be set aside for common open space be dedicated or made available to public use. The ordinance may require that the landowner provide for and establish an organization for the ownership and maintenance of any common open space for the benefit of residents of the development, and that for a period of not less than 20 years, such organization shall not be dissolved nor shall it dispose of any common open space, by sale or otherwise, except to an organization conceived and established to own and maintain the common open space for the benefit of such development, and that thereafter such organization shall not be dissolved nor shall it dispose of any of its open space without first offering to dedicate the same to the municipality or any other government agency.

(2) If the organization established to own and maintain common open space, or any successor organization, at any time after establishment of the planned unit development fails to maintain the common open space in reasonable order and condition in accordance with the plan, the municipality may serve written notice upon such organization or upon the residents and owners of the planned unit development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition. The notice shall include a demand that such deficiencies of maintenance be cured within [30] days thereof, and shall state the date and place of a hearing thereon which shall be held within [14] days of the notice. At the hearing the municipality may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or modifications are not corrected within the [30] days or any extension thereof, the municipality may enter upon the common open space and maintain it for a period of [1 year]. The entry and maintenance shall not vest in the public any rights to use the common open space except when it is voluntarily dedicated to the public by the owners. Before the expiration of the [year], the municipality shall, upon its initiative or upon the

request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to the organization, or to the residents of the planned unit development, to be held by the municipal authority, at which hearing the organization or the residents of the planned unit development shall show cause why maintenance by the municipality shall not, at the election of the municipality, continue for a succeeding [year]. If the municipal authority determines that the organization is ready and able to maintain the common open space in reasonable condition, the municipality shall cease to maintain the common open space at the end of the [year]. If the municipal authority determines that the organization is not ready and able to maintain the common open space in a reasonable condition, the municipality may continue to maintain the common open space during the next succeeding [year] and subject to a similar hearing and determination, in each [year] thereafter. The decision of the municipal authority in any such case shall constitute a final administrative decision reviewable in accordance with the provisions applicable to appeals on individual rezoning applications.

(3) The cost of the maintenance by the municipality shall be assessed ratably against the properties within the planned unit development that have a right of enjoyment of the common open space, and shall become a tax lien on the properties. The municipality, at the time of entering upon the common open space for the purpose of maintenance, shall file a notice of such lien in the manner provided by law upon the properties affected by such lien within the planned unit development.

(d) No planned unit shall be authorized that contains less than [5] dwelling units, or less than [5] commercial uses, or [3] industrial uses, singly or in combination.

(e) The authority granted to a municipality to establish standards for the location, width, course and surfacing of public streets and highways, alleys, ways for public service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, storm water drainage, water supply and distribution, sanitary sewers and sewage collection and treatment, shall be vested in the municipal authority for the purposes of this act. The standards applicable to a planned unit development may be different than, or modifications of, the standards and conditions otherwise required of subdivisions authorized under a subdivision control ordinance of the municipality; provided however, that an ordinance adopted pursuant to this act shall set forth the limits and extent of any modifications or changes in such standards and conditions in order that a landowner may know the limits and extent of permissible modifications from the standards otherwise applicable to subdivisions. The limits of modification or change established in an ordinance adopted pursuant to this act as well as the degree of modification or change within the limits authorized in a particular case by the municipal authority shall take into account that the standards and conditions established in the subdivision control ordinance of the municipality may not be appropriate or necessary for land development of the type or design contemplated by this act or for the planning and creation of a planned community.

(f) An ordinance adopted pursuant to this act shall set forth the standards and criteria by which the design, bulk and location of buildings shall be evaluated. All standards and criteria for any feature of a planned unit development shall be set forth with sufficient certainty to protect the public interest and provide reasonable criteria by which specific proposals for a planned unit development can be evaluated. All standards in the ordinance shall not unreasonably restrict the ability of the landowner to relate the plan to the particular site and to the particular demand for housing, commercial or industrial users existing at the time of development.

Section 5. Enforcement and Modification of Provisions of the Plan. (a) The provisions of the plan relating to (1) the use of land and the use, bulk and location of buildings and structures, (2) the quantity and location of common open space, except as provided in section 4 hereof, and (3) the intensity of use of the density of residential units, shall run in favor of the municipality and shall be enforceable in law or in equity by the municipality, without limitation on any powers or regulation otherwise granted the municipality by law.

(b) All provisions of the plan shall run in favor of the residents and owners of the planned community, but only to the extent expressly provided in the plan and in accordance with the terms of the plan. To that extent the provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or equity by the residents and owners, acting individually, jointly, or through an organization designated in the plan to act on their behalf; provided, however, that no provision of the plan shall be implied to exist in favor of residents and owners of the planned unit development except as to those portions of the plan which have been finally approved and have been recorded.

(c) All those provisions of the plan authorized to be enforced by the municipality under subsection (a) of this section may be modified, removed or released by the municipality (except grants or easements relating to the service or equipment of a public utility unless expressly consented to by the public utility), subject to the following conditions;

(1) No such modification, removal or release of the provisions of the plan by the municipality shall affect the rights of the residents and owners of the planned unit development to maintain and enforce those provisions, at law or equity, as provided in subsection (b) of this section;

(2) No modification, removal or release of the provisions of the plan by the municipality shall be permitted except upon a finding by the municipal authority, following a public hearing called and held in accordance with the provisions of section 7 of this act, that the same is consistent with the

efficient development and preservation of the entire planned unit development, does not adversely effect either the enjoyment of land abutting upon or across a street from the planned unit development or the public interest, and is not granted solely to confer a special benefit upon any person.

(d) Residents and owners of the planned unit development may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove or release their rights to enforce the provisions of the plan but no such action shall affect the right of the municipality to enforce the provisions of the plan in accordance with the provisions of subsection (a) of this section.[1]

Section 6. Application for Tentative Approval of Planned Unit Development. It is hereby declared to be in the public interest that all procedures with respect to the approval or disapproval of a plan for a planned unit development, and the continuing administration thereof shall be consistent with the following provisions:

(a) An application for tentative approval of the plan for a planned unit development shall be filed by or on behalf of the landowner;

(b) The application for tentative approval shall be filed by the landowner in such form, upon the payment of such a reasonable fee and with such official of the municipality as shall be designated in the ordinance adopted pursuant to this act, and a copy of the plan and application shall be forwarded to the [state planning agency];

(c) All planning, zoning and subdivision matters relating to the platting, use and development of the planned unit development and subsequent modifications of the regulations relating thereto, to the extent such modification is vested in the municipality, shall be determined and established by the municipal authority;

(d) The ordinance shall require only such information in the application as is reasonably necessary to disclose to the municipal authority: (1) the location and size of the site and the nature of the landowner's interest in the land proposed to be developed; (2) the density of land use to be allocated to parts of the site to be developed; (3) the location and size of any common open space and the form of organization proposed to own and maintain any common open space; (4) the use and the approximate height, bulk and location of buildings and other structures; (5) the feasibility of proposals for the disposition of sanitary waste and storm water; (6) the substance of covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings and

[1] Most of the remaining sections deal with procedural steps in applying for tentative and final approval of the PUD, and judicial review. Some States may wish to leave these procedures – with the exception of judicial review – to be spelled out by ordinance rather than statute. In that case the applicable remaining sections could be used in drafting a local ordinance.

structures, including proposed easements or grants for public utilities; (7) the provisions for parking of vehicles and the location and width of proposed streets and public ways; (8) the required modifications in the municipal land use regulations otherwise applicable to the subject property; and (9) in the case of plans which call for development over a period of years, a schedule showing the proposed times within which applications for final approval of all sections of the planned unit development are intended to be filed;

(e) The application for tentative approval of a planned unit development shall include a written statement by the landowner setting forth the reasons why, in his opinion, a planned unit development would be in the public interest and would be consistent with the municipal statement of objectives on planned unit development; and

(f) The application for and tentative and final approval of a plan for a planned unit development prescribed in this act shall be in lieu of all other procedures or approvals otherwise required pursuant to zoning and subdivision control ordinances and regulations authorized to be adopted by the municipality.

Section 7. Public Hearings. (a) Within [45] days after the filing of an application pursuant to section 6, a public hearing on the application shall be held by the municipal authority, in accordance with procedures, including public notice, prescribed in [cite statute] for hearings on amendments to a zoning ordinance, except as provided in subsections (b) and (c).

(b) For an application involving property situated within [200] feet of an adjoining municipality, notice shall be given to the municipal clerk of the municipality at least [20] days and not more than [30] days prior to the hearing.

(c) For an application involving over [300] acres, notice shall be given to the municipal clerk of each adjoining municipality, the [county planning agency] and the [state planning agency] at least [20] days and not more than [30] days prior to the hearing, for review and recommendations.

Section 8. The Findings. (a) The municipal authority shall, within [60] days following the conclusion of the public hearing, by written resolution either (1) grant tentative approval of the plan as submitted, (2) grant tentative approval subject to specified conditions not included in the plan as submitted, or (3) deny tentative approval to the plan. Failure of the municipal authority to so act within the period shall be deemed to be a grant of tentative approval of the plan as submitted. If tentative approval is granted, other than by lapse of time, either of the plan as submitted or of the plan with conditions, the municipal authority shall, as part of its resolution, specify the drawings, specifications and surety device that shall accompany an application for final approval. If tentative approval is granted subject to conditions, the landowner shall, within [45] days after receiving a copy of the written resolution of the municipal authority, notify the municipal authority of his acceptance of or his refusal to accept all the conditions. If the landowner refuses to accept all the conditions the municipal authority shall be deemed to have denied tentative approval of the plan. If the landowner does not, within the period, notify the municipal authority of his acceptance or refusal to accept all the conditions, tentative approval of the plan, with all the conditions, shall stand as granted. Nothing contained herein shall prevent the municipal authority and the landowner from mutually agreeing to a change in the conditions, and the municipal authority may, at the request of the landowner extend the time during which the landowner shall notify the authority of his acceptance or refusal to accept the conditions.

(b) The grant or denial of tentative approval by written resolution shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth the reasons for the grant, with or without conditions, or for the denial, and the resolution shall set forth with particularity in what respects the plan would or would not be in the public interest including but not limited to findings of fact and conclusions on the following:

(1) In what respects the plan is or is not consistent with the statement of objectives of a planned unit development;

(2) The extent to which the plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest;

(3) The purpose, location and amount of the common open space in the planned unit development, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of development;

(4) The physical design of the plan and the manner in which the design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, and further the amenities of light and air, recreation and visual enjoyment;

(5) The relationship, beneficial or adverse, of the proposed planned unit development to the neighborhood in which it is proposed to be established; and

(6) In the case of a plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents and owners of the planned unit development in the integrity of the plan.

(c) If a plan is granted tentative approval, with or without conditions, the municipal authority shall set forth in the written resolution the time within which an application for final approval of the plan shall be filed or, in the case of a plan which provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed. The time so established between grant of tentative approval and an application for final approval shall not be less than [3] months and, in the case of developments over a period of years, the time between applications for final approval of each part of a plan shall be not less than [6] months; provided nothing herein contained shall be construed to limit a landowner from the presentation of any application for final approval earlier than the time period hereinabove set forth.

Section 9. Status of Plan after Tentative Approval. (a) Within [5] working days after the adoption of the written resolution provided for in section 8, it shall be certified by the clerk of the municipality and shall be filed in his office, and a certified copy shall be mailed to the landowner. Where tentative approval has been granted, it shall be noted on the zoning map maintained in the office of the clerk of the municipality.

(b) Tentative approval of a plan shall not qualify a plat of the planned unit development for recording nor authorize development or the issuance of any building permits. A plan which has been given tentative approval as submitted, or which has been given tentative approval with conditions which have been accepted by the landowner (and provided that the landowner has not defaulted nor violated any of the conditions of the tentative approval), shall not be modified, revoked or otherwise impaired by action of the municipality pending an application or applications for final approval, without the consent of the landowner, provided an application for final approval is filed or, in the case of development over a period of years, provided applications are filed, within the periods of time specified in the resolution granting tentative approval.

(c) If a plan is given tentative approval and thereafter, but prior to final approval, the landowner elects to abandon part or all of the plan and so notifies the municipal authority in writing, or if the landowner fails to file application or applications for final approval within the required period of time or times, as the case may be, the tentative approval shall be revoked and all that portion of the area included in the plan for which final approval has not been given shall be subject to those local ordinances applicable thereto, as they may be amended from time to time, and the same shall be noted on the zoning map in the office of the clerk of the municipality and in the records of the clerk of the municipality.

Section 10. Application for Final Approval. (a) An application for final approval may be for all the land included in a plan or, to the extent set forth in the tentative approval, for a section thereof. The application shall be made to the official of the municipality designated by the ordinance and within the time or times specified by the resolution granting tentative approval. The application shall include such drawings, specifications, covenants, easements, conditions and form of surety device as were set forth by written resolution of the municipal authority at the time of tentative approval. A public hearing on an application for final approval of the plan, or part thereof, shall not be required, provided the plan, or the part thereof, submitted for final approval, is in substantial compliance with the plan theretofore given tentative approval.

(b) A plan submitted for final approval shall be deemed to be in substantial compliance with the plan previously given tentative approval provided any modification by the landowner of the plan as tentatively approved does not: (1) vary the proposed gross residential density or intensity of use by more than [5] % nor (2) involve a reduction of the area set aside for common open space nor the substantial relocation of such area; nor (3) increase by more than [10] % the floor area proposed for nonresidential use; nor (4) increase by more than [5] % the total ground areas covered by buildings nor involve a substantial change in the height of buildings. A public hearing shall not be held to consider modifications in the location and design of streets or facilities for water and for disposal of storm water and sanitary sewerage.

(c) A public hearing shall not be held on an application for final approval of a plan when the plan as submitted for final approval is in substantial compliance with the plan as tentatively approved. The burden shall be upon the landowner to show the municipal authority good cause for any variation between the plan as tentatively approved and the plan as submitted for final approval. If a public hearing is not required for final approval, and the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, and as required by the resolution of tentative approval, the municipality shall, within [45] days of the filing, grant the plan final approval; provided, however, that, if the plan as submitted contains variations from the plan given tentative approval but remains in substantial compliance with the plan as submitted for tentative approval, the municipal authority may after a meeting with the landowner, refuse to grant final approval and shall, within [45] days from the filing of the application for final approval, so advise the landowner in writing of the refusal, setting forth in the notice the reasons why one or more of said variations are not in the public interest. If the authority refuses approval, the landowner may (1) file his application for final approval without the variations objected to by the municipal authority on or before the last day of the time within which he was authorized by the resolution granting tentative approval to file for final approval, or within [30] days from the date he received notice of the refusal, whichever date shall last occur; or (2) treat the refusal as a denial of final approval and so notify the municipal authority.

(d) If the plan as submitted for final approval is not in substantial compliance with the plan as given tentative approval, the municipal authority shall, within [45] days of the date the application for final approval is filed, so notify the landowner in writing setting forth the particular ways in which the plan is not in substantial compliance. The landowner may: (1) treat the notification as a denial of final approval; or (2) refile his plan in a form which is in sub-substantial compliance with the plan as tentatively approved; or (3) file a written request with the municipal authority that it hold a public hearing on his application for final approval. If the landowner shall elect either alternative (2) or (3) above he may refile his plan or file a request for a public hearing, as the case may be, on or before the last day of the time within which he was authorized by the resolution granting tentative approval to file for final approval, or [30] days from the date he receives notice of the refusal, whichever date shall last occur. Any such public hearing shall be held within [30] days after request for the hearing is made by the landowner, and notice thereof shall be given and the hearings shall be conducted in the manner prescribed in section 7 of this act. Within [45] days after the conclusion of the hearing, the municipal authority shall by resolution either grant final approval to the plan or deny final approval to the plan. The grant or denial of final approval of the plan shall, in cases arising under this subsection (d) be in the form and contain the findings required for a resolution on an application for tentative approval set forth in section 8 of this act.

(e) If the municipal authority fails to act, either by grant or denial of final approval of the plan within the time prescribed the landowner may, after [20] days' written notice to the municipal authority, file a complaint in the [appropriate court], and upon showing that the municipal authority has failed to act either within the time prescribed, or subsequent to the receipt of the written notice provided for in this subsection (e) and that the landowner has complied with the procedures set forth in this section, the plan shall be deemed to have been finally approved and the court shall, upon a summary proceeding, enter an order directing the county clerk to record the plan as submitted for final approval without the approval of the municipal authority. A plan so recorded shall have the same force and effect as though it had been given final approval by the municipal authority.

(f) A plan, or any part thereof, which has been given final approval by the municipal authority shall be so certified without delay by the clerk of the municipality and shall be filed of record forthwith in the office of the county clerk before any development shall take place in accordance therewith. Upon the filing of record of the plan all other ordinances and subdivision regulations otherwise applicable to the land included in the plan shall cease to apply thereto. Pending completion within [5] years of said planned unit development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of the plan, or part thereof, as finally approved, shall be made nor shall it be impaired by act of the municipality, except with the consent of the landowner.

(g) If a plan, or a section thereof, is given final approval and thereafter the landowner shall abandon the plan or the section thereof that has been finally approved, and shall so notify the municipal authority in writing; or, if the landowner shall fail to commence the planned unit development within [18] months after final approval has been granted, then such final approval shall terminate and be deemed null and void unless such time period is extended by the municipal authority upon written application of the landowner.

Section 11. Judicial Review. **Any decision of the municipal authority under this act granting or denying tentative approval of a plan or authorizing or refusing to authorize a modification in a plan shall be deemed to be a final administrative decision and shall be subject to judicial review in the manner provided by law for individual rezoning applications.**

Section 12. Separability. **[Insert separability clause.].**

Section 13. Effective Date. **[Insert effective date.].**

MANDATORY DEDICATION OF PARK AND SCHOOL SITES[1]

In most States enabling legislation governing the creation of subdivision development authorizes local governments to adopt reasonable regulations requiring developers to provide adequate streets, curbs, gutters, sidewalks, sewer lines, water lines, and storm drainage facilities to service their own subdivisions. To some extent this is a method – analogous to a special assessment – of recouping the cost of local facilities whose benefits can be directly attributed to the immediate area.

Mandatory dedication provisions have been much less frequently applied to land or open space, park and recreation areas, and school sites. It is now generally recognized, however, that these types of land are a vital feature of sound subdivision design and are as necessary for guiding future urban growth as the provision of physical facilities, such as streets and sewers, and that in the case of large subdivisions, these amenities are primarily attributable to the residents of the subdivision rather than the community as a whole. For their part, some developers have found that provision of such "extras" as parks and school sites results in larger returns on their investment. A number of States have therefore amended subdivision control enabling legislation to include authorization for local governments to make reasonable provisions for open space, recreation, and school site land and to require dedication by the developers.

One difficulty in administering such a provision is that small developments frequently will not include enough total land to warrant dedication of a parcel of useable size, or will not include enough desirably located land. In the interest of equity, provision must therefore be made for payment-in-lieu of dedication at the local jurisdiction's option.

Requiring dedication or an in-lieu payment will relieve local governments of pressure to bargain with developers for dedication of land for open space, parks, and school sites. Such bargaining can lead localities to permit higher density land uses, without the safeguards embodied in some of the modern flexible zoning techniques, such as cluster zoning and planned unit developments.

The following suggested legislation is based on a bill introduced in the Virginia General Assembly to revise the planning, subdivision and zoning law for urbanizing counties. It is framed as an amendment to existing legislation authorizing local subdivision regulation. It should be noted that the mandatory dedication provisions of this proposed ordinance are not intended to apply to subdivisions meeting required standards of planned unit development ordinances.

The first section authorizes mandatory dedication of a "reasonable" amount of land, with provision for an upper limit on the amount that may be required. Dedication is limited to areas subject to approved park and school site plans. Regulations must set standards for determining the amount of land required, and certain bases for these standards are specified, including the number and type of dwellings in the development. The locality is authorized to select the location of the land to be dedicated, but must take into account differences in market value of property that may be included in any dedication.

The second section provides for payment-in-lieu of dedication, and requires that the implementing regulations enumerate standards to be applied in deciding when it is not in the public interest to accept payment-in-lieu. Since the purpose is to acquire appropriately located land for neighborhood public purposes, a developer should not be able to "buy out" of his obligation at will. The payment-in-lieu approach should be used only when a development is not large enough or when there is no satisfactory site within the development.

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[1] This draft bill incorporates one of several approaches suggested in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth*, as measures for States to consider in implementing policies for urban growth and new community development.

The draft legislation contemplates that the school and park functions are performed within the same geographical jurisdiction as the municipality or county exercising the mandatory dedication authority. In those cases where the boundaries are not coextensive, it will be necessary to assure that the same standards apply throughout the jurisdiction of the school or park district. Otherwise there will be inequitable variations among property owners of the school or park district as to the degree they share in the total school and park site acquisition costs. They will share equitably in such costs financed out of general taxes but inequitably in "tax equivalents" – the cost of the dedications that the developer passes on to the buyer in the selling price. The problem might be met by requiring all counties or municipalities having jurisdiction within the district to adopt a single set of standards by interlocal agreement. Appropriate language to establish this requirement is included in brackets as the last section of the proposed statute.

A problem of equity also arises between property owners who were in the school or park district before initiation of the mandatory dedication requirement and those who came in afterwards. The latter will in effect be assessed a special assessment for a local improvement of the kind that formerly was financed on a general revenue basis. This kind of inequity occurs in the introduction of any new policy that shifts the basis of financing in this way, however, and it is probably not feasible to avoid or overcome it.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "Amendment to state legislation authorizing counties and municipalities to exercise subdivision regulation powers."]

(Be it enacted, etc.)

Section 1. [Appropriate citation to existing subdivision regulation law] is hereby amended by adding the following new sections at the end thereof:

Section [ ]. Dedication of School, Park and Playground Sites. For those portions of [municipalities, counties] for which plans for future sites for schools and parks and playgrounds have been adopted and published pursuant to [cite local planning enabling statute], the [governing body] may by resolution or ordinance include, as a part of the [municipality's, county's] subdivision control regulations, requirements that a subdivider of land dedicate such land areas, sites and locations for school, park and playground purposes as are reasonably necessary to service the proposed subdivision and the future residents thereof, but in no case more than [ ] percent of the gross area of the proposed subdivision. The regulations may provide that the dedication shall be a condition precedent to the approval of any subdivision plat. They shall set forth the standards to be applied in determining

the amount of land that is required to be dedicated. These standards shall be based upon the number and type of dwelling units or structures to be included in each subdivision. The standards shall also be based upon studies and surveys conducted by the [municipality, county] in order to determine the need, if any, for school, park and playground sites generated by existing subdivisions within the [municipality, county] containing various types of dwelling units or structures.

The regulations may also provide that the [municipality, county], or a designated department or agency thereof, shall have the authority to select the location of land areas to be dedicated for school, park and playground purposes. If such authority is exercised, the dedication provision shall take into consideration variations in the relative desirability and market value of the land that may be included within the area of any particular, proposed subdivision.[1]

Section [ ]. Payment in Lieu of Dedication. **When the [governing body] adopts regulations requiring a subdivider to dedicate school, park and playground sites, as authorized by section [the preceding section], it may also adopt, as a part of the [municipality's, county's] subdivision control regulations, provisions requiring a subdivider, in lieu of dedicating the sites, to pay to the [municipality, county] a sum of money equal to the value of land that would otherwise be required to be dedicated for school, park and playground purposes, whenever the department or agency charged with administering the dedication provisions determines that it would not be in the public interest**

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[1] The legislature may wish to spell out the procedure for adjusting the area of land dedicated to the varying value of property throughout the subdivision. Following is one suggestion:

Such consideration shall be in the form of provisions that adjust the total amount of land that may be required to be dedicated in accordance with the value of the particular land area or areas selected for dedication as opposed to the average per acre or other unit value of all land within the proposed subdivision, in accordance with the following formula:

$$\frac{\text{Average value (per acre or other unit) of all land within the subdivision}}{\text{Average value (per acre or other unit) of the land selected for dedication}} = \frac{\text{“x”}}{\text{Number of acres (or other units of land) required to be dedicated under standards relating to number and type of dwelling units or structures}}$$

where "x" equals the total amount of land that may be required to be dedicated.

to accept the dedication in connection with a particular proposed subdivision.[1] The provisions shall enumerate the standards to be applied in determining when it is not in the public interest to accept the dedication and shall provide for the manner of making payment. All funds so received shall be held by the [municipality, county], or a designated department or agency thereof, in a special account, and shall be applied and used by the [municipality, county] to acquire school, park and playground sites for the benefit of the residents of the subdivision for which the payment was made. Provisions may be adopted establishing standards for the application and use of the funds in accordance with the foregoing limitation. The provisions may also provide that the payment in lieu of dedication shall be a condition precedent to the approval of any subdivision plat, or may provide that the payment be deferred or made in installments following approval of a subdivision plat, or may provide that the payment be deferred or made in installments following approval of a subdivision plat upon the subdivider's posting of a good and sufficient surety bond guaranteeing the payment.

[Section [ ]. Certification of Standards by School and Park Districts. When the boundaries of the [municipality, county] do not coincide with those of the [school district] [park district] responsible for administering the school and park programs, the governing body of the [municipality] [county] shall refer the standards required by [the preceding two sections] to the [school district] [park district] in which the proposed subdivision is located. The standards shall not be effective until the [school district[ ]park district] certifies, pursuant to procedures set forth in an interlocal agreement, that they are the same as those prevailing throughout the jurisdiction of the [school district] [park district].]

Section 2. Separability. [Insert separability clause.]

Section 3. Effective Date. [Insert effective date.]

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[1] The legislature may consider it desirable to specify the procedure for determining the amount of the in-lieu payment. Following is a possible approach:

Where a fee is required to be paid in lieu of land dedication, the amount of such fee shall be based on the average price per acre which the [school board] and the [park authority] would be required to pay for an amount of land equivalent to that which the subdivider or developer would otherwise be required to dedicate, pursuant to section [ ] hereof. The average price per acre used to calculate the fee shall be established annually by the [school board] and the [park authority], subject to [governing body's] approval, based on their best knowledge of trends in site costs, and such price shall be applied [municipal-, county-] wide. The average price per acre used to establish the fee for the current calendar year shall be that for land to be purchased in the following calendar year. An appropriate schedule of fees shall be published in the [planning agency], subject to the approval by the [governing body], and shall become effective January 1. This schedule of fees shall be reviewed annually and revised as necessary.

31-39-00

STATE HIGHWAY INTERCHANGE PLANNING DISTRICTS[1]

Highways, along with water and sewer lines and facilities, are among the major determinants of the location of urban development. Public decisions regarding the provision of these facilities are a major influence in determining where and when urban growth will occur. A judicious use of development controls along highways, coupled with an access policy related to areawide development plans, can exert a significant influence upon development patterns. Highway planning clearly should be an integral part of overall physical planning conducted by the State and its localities.

Local control of land use around highway interchanges should be relied upon to the greatest possible extent. In some instances, however, state action may be necessary, especially in rural areas where special problems are created by the extension of major limited access highways. In such areas, counties and smaller municipalties normally do not have adequate land-use, subdivision, and other developmental controls to regulate increased commercial, industrial, and homebuilding activities generated by the highways. Although the rights-of-way of Federal interstate highways are rigidly regulated, the areas immediately beyond, and particularly along the access roads, in numerous instances are becoming dreary, unsightly, honky-tonk strip developments. The very rigidity of some highway controls generates a clustering of motel, restaurant, drive-in, and other type of activities along the rights-of-way at access points and at interchanges. Highway development has also generated isolated, small industrial, warehouse and similar installations and subdivisions. Another problem arises from the fact that, once established, many of the uses are protected as "nonconforming uses" even when controls finally are inaugurated.

The draft bill below seeks to control development at highway interchanges in those cases where municipalities or counties are not exercising effective land use and development controls. This is done by charging a state agency with exercising land-use controls according to prescribed standards. The agency, located within the department of community affairs, has authority, subject to the governor's approval, to decide whether local controls are effective or not. A county or municipality may appeal to the courts any decision declaring its controls inadequate. Finally, provision is made for establishing or reestablishing local controls when the county or municipality shows readiness to exercise such controls. The point should be emphasized that any control over land use and development at highway interchanges, whether State or locally administered, should be consistent with the State urbanization plan or policies where such exists.

In maintaining control over land use, a wider range of techniques may be utilized. Many of these techniques are already available to larger municipalities and urban counties. These techniques can be grouped under four major headings: eminent domain, police powers, contractual agreements, and doctrine of nuisance laws. Of these four, eminent domain and police powers have been the most widely used to date. The methods generally used under eminent domain include: (1) the acquisition in fee simple of land surrounding interchanges and its retention or long-term lease; (2) acquisition of development rights or easements; (3) temporary acquisition of land and its resale according to a development plan (urban renewal approach); and (4) acquisition of access rights. The four major police power controls are: (1) zoning; (2) setback requirements; (3) subdivision controls; and (4) the official map.

Every effort should be made to retain effective land use controls at the local level, but, where this is impossible, State control may be necessary. In planning a State program for land-use control, it is important to know which protective devices are institutionally feasible as well as effective. The selection of appropriate controls and the granting of rights to use these controls will vary from State to State. The draft legislation below provides a combination of eminent domain and police powers such as: (1) acquisition of development rights by States; (2) acquisition of access rights by States; (3) the urban renewal approach (temporary acquisition); (4) State land use controls to implement an interchange plan; and (5) zoning at the local level.

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[1] This draft bill incorporates one *of* several approaches suggested in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth,* as measures for the States to consider in implementing policies for urban growth and new community development.

Section 1 of the draft bill enunciates a State policy for the control of highway interchange, as one of the major determinants of orderly urban growth. Section 2 defines the terms necessary to an understanding of the bill.

Section 3 establishes a State Commission to control land use around highway interchanges. It is located within an appropriate State agency or department in charge of local affairs, rather than being set up as a new independent commission or using the State highway commission. The Commission consists of five members appointed by the governor, with local government and the public represented equally. One State official, designated by the governor, serves as chairman. The powers and duties, voting procedures, staff, and compensaton for the commission are handled in Section 4.

Section 5 stipulates procedures for the Commission to follow in carrying out its duties. After the Commission conducts studies and hearings, it can establish a State highway interchange planning district, if it finds that a local plan is inadequate and that an adequate plan is necessary for effective development of the area. Any decision of the Commission, however, is subject to the approval of the governor.

Section 6 authorizes the Commission to enact zoning controls, and Section 7 prohibits any person from subdividing land within an interchange area unless approved by the Commission. Section 8 provides controls over the issuance of building permits in an interchange district. Section 9 establishes the procedure for review and appeal for variances or exceptions.

Section 10 prevents construction or relocation of buildings around an existing or proposed highway interchange until the Commission can take action to accept a local plan for land use control or establish a State highway interchange planning district. Section 11 provides judicial review for any individual or local jurisdiction aggrieved by any regulation or order of the Commission.

Section 12 provides a penalty for any person violating any rule or order of the Commission. The remaining two sections consist of a separability clause and effective date for the Act.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act Providing for the Control and Development of Land Surrounding Highway Interchanges."]

(Be it enacted, etc.)

Section 1. Findings and Purpose.

(a) The [legislature] finds that:

(1) highways and their interchanges are a major determinant of the location and quality of urban development;

(2) special problems are created by the extension of major limited access highways through the rural countryside;

(3) counties and smaller municipalities normally do not have adequate land-use development, subdivision, and other development controls to regulate the increased commercial, industrial, and home-building activities generated by the highways;

(4) areas immediately beyond the rights-of-way of interstate highways and particularly along access roads are being developed at a level and pace which threatens to impair the usefulness of many highway interchanges as traffic facilities and which severely hampers orderly urban growth.

(b) The purpose of this act is to insure the greatest possible benefits from the limited access portion of the state highway system and from the public investment therein. To this end, it is necessary to:

(1) promote the safety, convenience, and enjoyment of public travel on or about state highway interchanges and connecting streets;

(2) lessen congestion on such highway interchanges and connecting streets;

(3) protect the public investment in highway interchanges;

(4) regulate the development of land abutting on or lying near highway interchanges; and

(5) control the subdivision, division, and use of land abutting on or lying near state highways, limited access highways, and connecting street interchanges.

Section 2. Definitions. As used in this act, and unless the context clearly requires otherwise:

(1) "Commission" means the Highway Interchange Planning and Development Commission[1] created by this act.

(2) "Highway" means a limited access highway, parkway, freeway, or connecting street.

(3) "Interchange" means an intersection which provides for the interchange of traffic between a limited access facility or highway as defined herein and one or more other highways which may be either of the conventional type of the limited access type. Such highways may intersect at the same grade or level or at different grades or levels. If two interchanges are 500 feet or less apart, measured along the center line of a limited access highway, they may be considered as a single interchange for the purposes of this act.

(4) "Interchange centerpoint" means the point at which the center lines of the intersecting highways meet or cross if at the same grade or level, or the point at which the center lines of

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[1] Some states may wish to use the state highway commission or another existing body rather than creating a new commission.

highways which cross or meet at different grades or levels would meet or cross if they intersected at the same grade or level. Two interchanges whose centerpoints are 500 feet or less apart measured along the center line of a limited access highway may be considered for the purposes of this act as a single interchange, if the centerpoint lies halfway between the centerpoints of the two intersections.

(5) "District" means an interchange planning district created by the [Highway Interchange Planning and Development Commission] as authorized by this act.

(6) "Division" means the division of a lot, parcel, or tract of land by the owner thereof or his agent for the purpose of sale, contract, or building development, except:

(i) transfer of interest in land by will or pursuant to court order;

(ii) mortgages or easements;

(iii) the sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created.

(7) "Subdivision" is a division of a lot, parcel, or tract of land by the owner thereof or his agent for the purpose of sale or building development where the act of division creates two or more parcels or building sites of ten acres each or less in area; or where two or more parcels or building sites of ten acres each or less in area are created by successive divisions within a period of five years.

Section 3. Creation of Highway Interchange Planning and Development Commission.[1] There is hereby created in [the state agency or department in charge of local affairs] the highway interchange planning and development commission. The commission shall consist of [five] members to be appointed by the governor, and shall include the director of the state planning office, or other official of the executive branch, two local government officials, and two persons who are not public officials.[2] The [director of the state planning office or the executive official designated by the governor] shall be the chairman of the commission. The local officials shall consist of [one municipal official and one county official][3] to be appointed by the governor from a panel submitted by the [state municipal league] [and the state association of county officials] respectively. Members of the commission shall be appointed for [four] years, and serve until their successors take office, with the exception of the chairman, who shall serve at the pleasure of the governor.

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[1] An alternative to the single commission would be separate commissions organized on a regional basis, with the local membership representative of the region. The state members would remain the same for each region, and the commissions, for administrative purposes, could still be placed under the state agency in charge of local affairs.

[2] Some states may wish to expand the commission to include the state highway commissioner or his representative.

[3] Those States who do not operate on a county basis may wish to alter this section to their own needs.

Members of the commission may be removed by the governor for inefficiency, neglect of duty, or malfesance in office upon the filing of written statement of charges and reasons for removal. Any member so charged may request a public hearing and can then be removed only if such hearings result in substantiation of the charges filed against him.

Section 4. Powers and Duties of the Commission. (a) In carrying out the purposes of this act, and in the absence of effective local control (as determined in accordance with Section 5(b) of this Act) the Highway Interchange Planning and Development Commission shall:

(1) conduct studies involving the development of highway interchanges and the evaluation of the effectiveness of local land use controls;

(2) publish and distribute copies of its plans and reports and employ such other means of publicity and education as necessary to carry out the purposes of this act;

(3) propose establishment of highway interchange planning districts, when local land use controls are found, on the basis of its initial studies, to be ineffective.

(4) review proposed local plans and ordinances that are received from affected local governing bodies, and hold public hearings on such plans and ordinances;

(5) establish, subject to approval of the governor, highway interchange planning districts, when the public hearing record indicates inadequate local land use controls in the highway interchange area;

(6) divide highway interchange planning districts into areas of such number, shape, and size as are best suited to carry out the purposes of this act;

(7) create zoning controls to regulate and restrict the division, subdivision, or other use of land and the erection, construction, alteration or use of buildings and other structures in such districts;

(8) acquire by lease, grant, gift, devise, purchase, or condemnation such real property in fee simple or any interest, right, easement, or privilege therein, including development rights and scenic easements, within any interchange planning district;

(9) dissolve, by resolution, any state highway planning district on a finding by the commission that effective land use controls can be administered by the affected local jurisdiction or jurisdictions; and

(10) adopt rules and regulation necessary to carry out the purposes of this act.

(b) *Vote.* An affirmative vote by a majority of the commission is required to take action.

(c) *Compensation.* Each member of the commission is entitled to the compensation of $[ ] per diem plus travel and other reasonable expenses for meetings, hearings, and other official business.

Section 5. Procedures of the Commission. (a) _Planning Districts._ In the absence of effective local land use controls, as determined pursuant to subsection (b) of this Section, the commission may, subject to the approval of the governor, establish by resolution, planning districts for state highway interchanges and shall define the boundaries thereof, not to encompass an area of a radius greater than [one and one-half miles] in any direction from the centerpoint of the interchange, but an interchange planning district may include additional contiguous areas located further than [1 and 1/2 miles] from the centerpoint of the interchange, if the commission find that such additional areas bear substantial relation to the planning and development of the interchange area, or to the traffic movement or control functions associated with the interchange. Such districts may be dissolved on a finding by the commission that local land use controls are adequate.

(b) _Determining the Effective Use of Local Controls._

(1) _Commission Studies._ The commission at its discretion or upon written request of any areawide planning body, county, municipality, or special district may conduct studies on related local land use controls at a highway interchange and the need for a highway interchange planning district. Such studies shall be made for areas where it is found that a highway interchange is creating or will create problems affecting the orderly urban growth of the area, or where development around an interchange threatened to contravene state or regional urbanization plans. Such studies in conjunction with any local plan submitted under subsection b(3) of this section shall provide the basis for a decision by the commission on the existence of effective local land use control.

(2) _Commission Proposals._ Based on findings from such studies, the commission may propose the formation of a highway interchange planning district, and shall so notify the municipalities and counties within whose jurisdiction the interchange is located.

(3) _Local Plans._ Upon notification by the commission of plans to establish a state highway interchange planning district, an affected local jurisdiction shall have a period of [4] months to submit to the commission a plan for the development of the area to be covered by the proposed interchange planning district. Such plan shall be consistent with the state urbanization plan, and shall describe the methods that will be used to control land use in the interchange area. In deciding whether a local plan is adequate, the commission shall determine if the plan contains provisions, when appropriate, for the following components: (i) a land use plan for the most desirable utilization of land in the interchange area; (ii) street and highway plan; (iii) mass transit plan; (iv) plans for public services and facilities; (v) public buildings and community design, including a subdivision and zoning plan; (vi) recreation plans for parks, playgrounds, and other recreation areas; (vii) conservation plan, including plans for water and all natural resources, for flood control, and watershed protection; (viii) any other component that is applicable or deemed by the commission to be

necessary; (ix) descriptions of the available land use controls, and combination of controls to be used to implement the interchange development plan; and (x) methods by which the controls are to be utilized and the goals of the plans are to be achieved.

(4) *Commission Hearings.* The commission shall, within [5] months of the date of notification, as provided in subsection (b) (2) of this section, hold public hearings. The commission's initial study, local plans submitted, and the hearings record shall form the basis for any decision by the commission on whether or not a state highway interchange planning district should be established.

(5) *Gubernatorial Approval.* Within [30] days after the completion of the hearings, the commission shall report its findings and recommendations to the governor. If establishment of an interchange planning district is recommended, the recommendation shall be implemented administratively unless vetoed by the governor within [10] days after submission.

(6) The commission shall conduct, at such reasonable times as it deems necessary to carry out the purposes of this act, a review of (i) the effectiveness of local land use controls in those highway interchange areas that the commission has, on the basis of its initial studies or as a result of a public hearing, consigned to the authority of local governing bodies; and (ii) the capability of local governing bodies within established highway interchange planning districts to provide effective land use controls for the interchange areas. If the commission finds that effective local land use controls no longer exist in a highway interchange area, it may propose the formation of a highway interchange planning district, pursuant to subsection 5(b) of this section. If the commission finds that the local governing bodies within an existing highway interchange planning district possess the capabilities to provide effective land use controls, it may dissolve the district, subject to approval by the governor.

Section 6. Zoning Controls. (a) The commission shall divide the districts into zoning areas within which it may regulate the use of land and the construction, alteration, or use of buildings and other structures.

(b) In the formation of zoning regulations for each district, the commission shall be guided by this section and by the objectives of the state urbanization plan and policies, and shall consider, but not be limited to, the existing or anticipated traffic load; existing or proposed points of ingress and egress; existing land use; the most suitable and productive use of land; the extent of investment in the development of land; and the extent of public investment. Land regulations which are more restrictive shall apply.

Section 7. Land Subdivision Control. The commission may regulate the subdivision of land within an interchange district. No person shall subdivide land lying wholly or partly within an interchange district until a subdivision plat or map has been approved by the commission.

Section 8. Building Permits Subject to Commission Approval. No building permit shall be issued by a unit of local government in an interchange district until approved by the commission.

Section 9. Variances; Exceptions. The commission may (1) hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of the regulations adopted pursuant thereto; (2) consider requests for special exceptions to regulations adopted under this act; and (3) consider requests for variances where a literal enforcement of the regulations will result in practical difficulty or unnecessary hardship.

Section 10. Control of Interim Development. No person shall construct, reconstruct, or relocate any building or other structure within one and one-half miles of the centerpoint of an existing, or officially designated future limited access highway interchange, until the commission, pursuant to Section 5 of this act, has either (1) made a finding that local land use controls are adequate, or (2) established a planning district for the interchange area.

Section 11. Judicial Review. Any person or local unit of government aggrieved by any regulation, decision, or order of the commission may appeal to the [specify appropriate court and cite state law pertaining to judicial review of administrative decisions].

Section 12. Enforcement; Penalties. The commission may institute injunctive or other appropriate action or proceeding to enjoin a violation of this act or of regulations adopted hereunder. Any person violating this act or the regulations adopted pursuant thereto shall be subject to a fine of not more than [$500]. Each day a violation continues shall be deemed a separate offense.

Section 13. Separability Clause. [Insert separability clause].

Section 14. Effective Date. [Insert effective date].

31-41-00

COUNTY CONSOLIDATION[1]

In many areas, the county, as an existing unit of government with appropriate geographical jurisdiction, can provide the public facilities and services necessary to supplement urban growth. In some instances, the effective performance of functions by counties, particularly those involving large scale urban development, may require a wider area of jurisdiction than a single county.

Where the economic, social, and natural patterns of urban growth extend beyond a single county, consolidating counties may offer a feasible alternative to superimposing an additional areawide level of government. County consolidation might well provide the most workable areawide approach to providing urban services, since it builds on an existing governmental structure.

The following proposed legislation would facilitate the consolidation of counties in those states desiring to allow local initiative and determination on consolidation proposals.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act Authorizing the Consolidation of Counties."]

Section 1. Consolidation Authorized. Any two or more adjoining counties may consolidate into a single county. The [governing bodies] of the counties to be consolidated may enter into an agreement to consolidate their respective counties, setting forth such facts as: (1) the names of the counties; (2) the name under which it is proposed to consolidate, which name must be distinguishable from the name of any other county in the state, other than the consolidating counties; (3) the property, real and personal, belonging to each county, and its fair value; (4) the indebtedness, bonded and otherwise of each county; (5) the proposed name and location of the county seat; (6) the proposed form of organization and government; (7) the terms for apportioning tax rates to service the existing bonded indebtedness of the respective counties; and (8) other terms of the agreement.

Section 2. Petition. The qualified voters of any county may file a petition, signed by at least [10] percent of the qualified voters, with the [governing body] requesting the [governing body] to effect a consolidation agreement with the county (or counties) named in the petition.

Section 3. Referendum. The question of consolidation shall be submitted to the voters in the counties proposed to be consolidated. If approved by a majority of those voting on the question in each county, the proposed consolidation shall become effective according to the terms of the consolidation agreement.

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[1] This draft bill incorporates one of several approaches set forth in the Advisory Commission's report, *Urban and Rural America: Policies for Future Growth,* as measures for the States to consider in implementing policies for urban growth and new community development.

Section 4. Effects of Consolidation. All the rights, privileges and franchises of each of the counties and all property, real and personal, and all debts due on whatever amounts, belonging to and of the counties, are transferred to and vested in the consolidated county: Provided, that all bonded debt of each county remains in effect after consolidation as a debt of that portion of the consolidated county within the limits of the former county that incurred the debt.

31-42-00

OPTIONAL FORMS OF COUNTY GOVERNMENT

The variation in social and economic conditions and the history of local government across the nation militate, quite properly, against any suggestion of a single ideal structural form of local government. Regardless of the form of local government, however, one thing appears certain; namely, that maximum local responsibility and maximum citizen participation in the governmental process can best be assured if the people themselves have a broad range of discretion in determining what form of local government is in their best interest.

During the current century most states have granted residents of municipalities the power to adopt various forms of local government. The most common forms so permitted are the strong mayor-council, the weak mayor-council, council-manager, and commission. Such authorization generally takes one or two forms: either a state statute which spells out in some detail the various alternatives, or a general statute authorizing the municipality to adopt a local charter under which any of the above alternatives are permissible. The granting of such discretion to municipalities was based on the assumption that the individual municipality should have the discretion to determine, within whatever limits the state legislature thought appropriate, the structure of the municipal government best suited to carry out public functions that the local government was to perform.

It is now evident that similar authority should be granted to counties in those states where counties constitute an important unit in the individual state's governmental structure. In such states counties with rapidly expanding populations are forced to provide more and more general functions of local government, such as fire and police protection, and water and sewer facilities, that have traditionally been performed by municipalities. These additional functions are being imposed upon counties in both rural and urban areas. In addition, many rural counties are being presented with a different type of problem, i.e., providing government services to an area with a declining population. In such communities it may be extremely difficult for the county to support a large staff of government personnel which is required by a state statute or constitution. In both instances it would be appropriate, within the limitations established by the legislature, to permit the residents of the county to determine that structure of county government which they feel most suited to the needs of the individual county.

The states which have considered the structure and organization of county governments in recent years have adopted various constitutional approaches to this particular problem. Each of these approaches, in one way or another, grants to the county the authority to determine its own form of county government.

The new Michigan constitution (Article VII, Section 2) specifically authorizes counties to adopt home rule charters pursuant to state law. The constitutions of Alaska (Article X, Section 3), Hawaii (Article VII, Section 1), Kansas (Article 9, Sections 1 and 2), and Virginia (Article VII, Section 110) authorize the establishment of counties pursuant to general act of the legislature. The constitutions of California (Article XI, Section 7-1/2) and New York (Article IX, Section 2) contain detailed provisions as to permissible alternative forms of county government that may be adopted by an individual county within the state. In other states, such as Maryland, counties may operate under a county charter that has been approved by a special act of the legislature. The State of Connecticut abolished counties after determining that they served no useful purpose in that state.

The above-listed states have all attempted to resolve the constitutional problem of optional forms of county government in a manner consistent with the needs of the individual state. The significance of their action rests upon the fact that these states felt that the prior law hampered the county in meeting its responsibilities as a viable unit of local government. The variation in approach taken by the states is in itself indicative of the fact that the functions and responsibilities of counties vary greatly from state to state and that the procedure to be taken in an individual state must therefore depend upon its individual situation.

In view of the changing nature and responsibilities of counties in the governmental structure, it is essential that all states review existing constitutional provisions relating to the organization and structure of county government to determine what, if any, changes should be made therein in order to insure more effective and responsible local government within the state.

The legislation submitted herewith is a means of implementing this objective. The suggested act authorizes three basic forms of county government and requires voter approval before a change may be made. It is patterned after a North Carolina statute (North Carolina, General Statutes, Chapter 153, Article III).

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize optional forms of county government."]

(Be it enacted, etc.)

Section 1. Optional Forms of County Government Authorized. Any county in this state may, pursuant to the provisions of this act and any other appropriate provisions of law, adopt any one of the optional forms of county government herein provided.

Section 2. [County Commissioners] Form. (a) *[County Commissioners] Form Defined.* [The county commissioners] form of county government shall be that form in which the government is administered by [a board of county commissioners.]

(b) *Modification of Regular Forms.* There may be modification of the [county commissioners] form adopted as hereinafter provided as follows: (1) the number of [commissioners] may vary in number from [three] to [five]; and (2) all [commissioners] may be elected for uniform or overlapping terms not exceeding [four] years.

Section 3. Manager Form. (a) *Manager Appointed or Designated.* The [board of county commissioners] may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all departments of the county government which the [board of county commissioners] has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the [board] may impose and confer upon the [chairman of the board of county commissioners] the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a full-time chairman. Or the [board] may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(b) *Duties of the Manager.* It shall be the duty of the county manager:

(1) to see that all the orders, resolutions, and regulations of the [board] are faithfully executed;

(2) to attend all the meetings of the [board] and recommend such measures for adoption as he may deem expedient;

(3) to make reports to the [board] from time to time upon the affairs of the county, and to keep the [board] fully advised as to the financial condition of the county and its future financial needs;

(4) to appoint, with the approval of the [board], such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(5) to perform such other duties as may be required of him by the [board].

***Section 4. [Elected County Executive].* (a) *[Elected County Executive] Form Defined.* The [elected county executive] form of government shall be that form in which the government is administered by a single county official, elected at large by the qualified voters of the county. The [board of county commissioners] shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the [board of county commissioners].**

(b) *Duties of the [Elected County Executive].* It shall be the duty of the elected county executive:

(1) to see that all the orders, resolutions, and regulations of the [board] are faithfully executed;

(2) to attend all the meetings of the [board] and recommend such measures for adoption as he may deem expedient;

(3) to make reports to the [board] from time to time upon the affairs of the county, and to keep the [board] fully advised as to the financial condition of the county and its future financial needs;

(4) to appoint, with the approval of the [board], such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(5) to perform such other duties as may be required of him by the [board].

***Section 5. Procedure.* The [board of county commissioners] may, upon its own motion, or shall upon receipt of a petition so requesting, signed by at least [ ] percent of qualified voters within the county, submit to referendum vote of all qualified electors within the county the question of whether one of the optional forms of county government shall be established within a county. If a majority of those voting on the question favor the adoption of a new form of county government,**

election of county officers for such optional form of county government shall be held at the next general election held within the county. If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next [two] years following the date of such disapproval.

Section 6. Effective Date. **[Insert effective date.]**

31-43-00

COUNTY SUBORDINATE SERVICE AREAS

It is a primary responsibility of government to provide and finance services needed by its citizens. Where units of general local government – counties, cities, and towns – fail to provide such services their citizens will demand the services from a higher level of government or utilize the special district device for obtaining them.

Numerous draft bills are directed toward giving greater authority and flexibility to units of general local government in order that they might better meet the needs of their citizens. The following proposal is directed to the same end. It is designed to minimize the need for special districts by authorizing counties to create subordinate service areas in order to provide and finance one or more governmental services within a portion of the county.

Where counties do not possess authority to create such areas there are only three alternatives available. First, the service can be financed from general county revenues which are derived from all residents of the county; second, the area desiring the service can create a special district; third, the residents can do without the service. The first alternative frequently may be politically unacceptable as well as highly inequitable in a given county and the third alternative may be incompatible with the public interest. Consequently, unless counties possess the authority to create subordinate service areas, demand is generated for the creation of numerous special districts.

The following suggested act is designed to authorize counties to establish subordinate service areas in order to provide any governmental service or additions to existing countywide services in such areas which the county is otherwise authorized by law to provide. Section 2 defines a county subordinate service area and section 3 permits the county governing body to set taxes within such areas of a different level than the overall county tax rate in order that only those receiving a particular service pay for it. It should be noted that a constitutional amendment may be necessary in some states to permit use of this device.

Sections 4, 5, 6, and 7 spell out the procedures for establishing a subordinate service area. Initiation of the proceedings may be undertaken by the county governing body either on its own motion or following receipt of a petition by the residents of the area. Under the latter procedure a public hearing would be required and final approval of creation of such an area by the county governing body in either case would be subject to referendum proceedings commence by the qualified voters within the territory of the proposed area.

Section 8 provides authority for extension of the boundaries of an existing service area pursuant to the same procedures authorized for their creation.

Section 9 directs the county governing body to provide an annual budget for the service authorized within the subordinate service area and to supply the revenues, either property taxes or service charges, to finance the service.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize counties to establish subordinate service areas in order to provide and finance governmental services."]

(Be it enacted, etc.)

Section 1. Purpose. **It is the purpose of this act to provide a means by which counties as units of general local government can effectively provide and finance various governmental services for their residents.**

Section 2. Definition. **"Subordinate service area" means an area within a county in which one or more governmental services or additions to countywide services are provided by the county and financed from revenues secured from within that area.**

Section 3. Establishment of Service Areas. **Notwithstanding any provision of law requiring uniform property tax rates on real or personal property within a county, counties may establish subordinate service areas to provide and finance any governmental service or function which they are otherwise authorized to undertake.[1]**

Section 4. Creation by [County Governing Body]. **The [county governing body] may establish a subordinate service area in any portion of the county by adoption of an appropriate resolution. The resolution shall specify the service or services to be provided within the subordinate taxing area and shall specify the territorial boundaries of the area. Adoption of a resolution shall be subject to the publication, hearing, and referendum provisions of law relating to [county governing body].**

Section 5. Creation by Petition. **(a) A petition signed by [ ] percent of the qualified voters within any portion of a county may be submitted to the [county governing body] requesting the establishment of a subordinate county service area to provide any service or services which the county is otherwise authorized by law to provide. The petition shall include the territorial boundaries of the proposed service area and shall specify the types of services to be provided therein.**

(b) Upon receipt of the petition and verification of the signatures thereon by the [county clerk], the [county governing body] shall, within [30] days following verification, hold a public hearing on the question of whether or not the requested subordinate service area shall be established.

(c) Within [30] days following the holding of a public hearing, the [county governing body] by

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[1] If the service is to be financed wholly or partly from property tax revenues, some states may have to amend constitutional provisions requiring uniform tax rates within a county. See the suggested constitutional amendment that follows this suggested legislation.

resolution, shall approve or disapprove the establishment of the requested subordinate county service area. A resolution approving the creation of the subordinate service area may contain amendments or modifications of the area's boundaries or functions as set forth in the petition.

Section 6. Publication and Effective Date. Upon passage of a resolution authorizing the creation of a subordinate county service area, the [county governing body] shall cause to be published [once] in [ ] newspapers of general circulation a concise summary of the resolution. The summary shall include a general description of the territory to be included within the area, the type of service or services to be undertaken in the area, a statement of the means by which the service or services will be financed, and a designation of the county agency or officer who will be responsible for supervising the provision of the service or services. The service area shall be deemed established [30] days after publication or at such later date as may be specified in the resolution.

Section 7. Referendum. (a) Upon receipt of a petition signed by [ ] percent of the qualified voters within the territory of the proposed service area prior to the effective date of its creation as specified in section 6, the creation shall be held in abeyance pending referendum vote of all qualified electors residing within the boundaries of the proposed service area.

(b) The [county governing body] shall make arrangements for the holding of a special election not less than [30] nor more than [60] days after receipt of such petition within the boundaries of the proposed taxing area. The question to be submitted and voted upon by the qualified voters within the territory of the proposed service area shall be phrased substantially as follows:

> Shall a subordinate service area be established in order to provide – [service
> or services to be provided] financed by [revenue sources]?

If a majority of those voting on the question favor creation of the proposed subordinate service area, the area shall be deemed created upon certification of the vote by the [county board of elections]. The [county board of elections] shall administer the election.

Section 8. Expansion of the Boundaries of a Subordinate Service Area. The [county governing body], on its own motion or pursuant to petition, may enlarge on any existing subordinate county area pursuant to the procedures specified in sections 4 through 7. Only qualified voters residing in the area to be added shall be eligible to participate in the election, but if [ ][2] percent of qualified voters residing in the area to be added shall be eligible to participate therein, all qualified voters residing in the proposed service area shall be eligible.

Section 9. Financing. Upon adoption of the next annual budget following the creation of a subordinate county service area the [county governing body] shall include in such budget appropriate

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[2] This percentage should be the same as that specified in subsection 7 (a).

provisions for the operation of the subordinate service area including, as appropriate, a property tax levied only on property within the boundaries of the subordinate taxing area or by levy or a service charge against the users of such services within the area, or by any combination thereof.

Section 10. Separability. **[Insert separability clause.]**

Section 11. Effective Date. **[Insert effective date.]**

Removal of Constitutional Barriers to Financing

County Subordinate Areas

As mentioned earlier, some states may find it necessary to amend constitutional provisions requiring uniform tax rates within a county, if a service is to be financed wholly or partly from property tax revenues. The following amendment is offered for consideration in those states that have uniform tax rate provisions that constitute a barrier to financing county subordinate service areas.

Suggested Constitutional Amendment

[Title, format, and procedural practices for constitutional amendment should conform to state practice and requirements.]

Notwithstanding any provision of this constitution requiring uniform tax rates on real or personal property within a county, the legislature may authorize counties to (1) levy anually a tax on property within the boundaries of any county subordinate service area created pursuant to an act of the legislature, which tax may be separate and in addition to the annual tax imposed on a countywide basis, and (2) incur indebtedness on a countywide basis for the purpose of performing functions and providing facilities and services within such a county subordinate service area. Any tax levied or indebtedness incurred under the authority of this section is subject to such limitations as may be established by the legislature.

31-43-10

COUNTY PERFORMANCE OF URBAN FUNCTIONS

The Advisory Commission on Intergovernmental Relations has proposed the enactment by state legislatures of a "package" of permissive powers to be utilized by the residents of metropolitan areas in restructuring governmental arrangements to meet areawide needs. One of the alternatives in this package that constitutes a fruitful possibility in a number of metropolitan areas is the urban county approach. The phrase "urban county approach" may refer to any one of several developments. One is the piecemeal transfer of individual functions from other local governments to the county. Suggested state legislation authorizing the legislative bodies of municipalities and counties to transfer responsibility for specified governmental services from one unit of government to the other is found on page 31-91-30 of this volume.

Another method is to permit the county, on its own initiative, to perform certain functions and services of a municipal character throughout all or part of its jurisdiction. This involves the expansion of some counties from the status of administrative units of the state to include an array of urban activities. The performance of urban functions by the county may be restricted to the unincorporated portions of the county or the county might be given sole and exclusive authority to perform certain functions throughout the entire county, including incorporated areas.

The legislation suggested below is written to permit the county to perform certain enumerated functions in the unincorporated portion of the county. It would not be practical to give the county sole and exclusive authority to perform a function in a municipality without providing first for a "charter reorganization" procedure that would allow the rearrangement of functions to be ratified by the voters of the areas concerned. In this connection, attention is called to the suggested legislation (31-51-00) which provides for metropolitan study commissions and which permits consideration of the problems of local government services and structure in urban areas by residents of the area as a whole.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Urban Functions Authorized. **Any county [with a population in excess of [one hundred] thousand as determined by the latest U.S. Government census of population, and which has an aggregate population density of at least [one hundred] persons per square mile][1] may perform the following functions and services throughout the unincorporated portions of the county:**

(1) domestic water supply and distribution;
(2) sanitary and storm sewer collection, treatment, and disposal;
(3) airports and air transport facilities;
(4) trash and refuse disposal;
(5) library facilities and services;

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[1] This act could be made applicable only to certain counties by including the bracketed language on population qualifications.

(6) park and recreation facilities and services;

(7) planning and zoning;

(8) [ ][2]

This enumeration shall not be construed or applied to diminish or restrict any other grant of powers to counties.

Section 2. Assumption of Assets, Rights, and Liabilities. **A county acting under authority of this act may assume, own, possess, and control assets, rights, and liabilities related to functions and services defined in section 1. Local improvement and other special districts wholly within a county, upon decision of the county governing body, may be divested of such assets, rights and liabilities in a manner prescribed by the county governing body. Where a special district encompasses territory in more than one county, adjoining counties may concurrently assume assets, rights, and liabilities as described in this section. Decisions approving proposals for the merger, consolidation, or dissolution of a special district shall provide for the equitable disposition of the assets of the subject district, for the adequate protection of the legal rights of employees of the district as specified in [cite here statutes which afford various civil service and tenure protection to employees of special districts], and for adequate protection of the legal rights of creditors.**

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[2] Some states may wish to include additional functions.

31-51-00

METROPOLITAN STUDY COMMISSIONS

The Advisory Commission's report, *Governmental Structure, Organization, and Planning in Metropolitan Areas,* contained a statement affirming that: "State constitutions and statutes should permit the people residing in metropolitan areas to examine and, if they so desire, to change their local government structure" to meet their needs for effective local government. It was further recommended that states enact legislation authorizing the establishment of locally initiated metropolitan area study commissions to develop proposals for revising and improving local government structure and services in the metropolitan area concerned. The suggested legislation which follows is designed to carry out this recommendation.

Many studies of governmental problems in urban areas have been made in recent years, some authorized by state and local governments, some by interested citizen groups. These studies frequently have produced greater public awareness of need for readjustment among the local units of government, but frequently authority has been lacking for the formal submission of resulting proposals to the voters of the area. Moreover, many of the studies have not been conducted to determine areawide needs but rather have confined themselves to individual problems of a municipality or an urban function, resulting in piecemeal approaches to the problem.

The draft legislation is directed toward permitting consideration of problems of local government services and structure in urban areas by residents of the area as a whole, acting on their own initiative. The formal status accorded the study commissions and the procedure for submission of their recommendations provide a basic assurance that areawide problems can be brought before the voters of the area affected, while guarding against irresponsible and precipitous action.

The legislation provides that metropolitan study commissions may be brought into existence by a majority vote at an election initiated by resolution of the governing bodies of the local units of government of the area, or by petition of the voters. Representation on a commission is designed to assure equitable recognition of population groups and governmental constituencies. Commission members are appointed by governing bodies of counties, the mayor and council of each city, and the governing bodies of other units of government acting jointly. A final member, the chairman, is chosen by the other members. Officials and employees of local government are not allowed to be commission members so that power to determine matters of basic governmental structure and authority may be exercised by the citizens directly rather than by their elected or appointed local representatives.

The commission is required to determine the boundaries within which it proposes that one or more metropolitan services be provided, and within two years of its establishment must prepare a comprehensive program for furnishing such metropolitan services as it deems desirable. Its recommendations may include proposals for carrying out the program, such as transfers of functions between local units; provision of metropolitan services by county governments; consolidation of municipalities, cities and counties, or special districts; and creation of a permanent urban area council of local officials. Public hearings are required on the commission's program. Appeal may be had to the courts for any grievance arising from the adjustment of property and debts proposed as part of the program.

To become effective, commission proposals for creation of a new unit of government such as a special district must be approved at a referendum by a majority of those voting on the issue in the jurisdiction of the proposed unit. Other proposals, such as abolishing or consolidating existing units, changing boundaries, or providing a new areawide service, require approval by a majority of those voting on the issue in each of the units affected.

Local units of government in the metropolitan area are authorized to appropriate funds for the commission's activities. A state agency is authorized to provide up to 50 percent matching funds as an encouragement to the study commissions and in recognition of the state's overall interest in the product of their deliberations.

The draft legislation is based on Chapter 516, Laws of 1963, State of Oregon.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing for the creation of metropolitan study commissions to study and propose means of improving essential governmental services in urban areas."]

(Be it enacted, etc.)

Section 1. Declaration of Policy, Purpose. (a) It is hereby declared to be the public policy of this state to provide for the residents of the metropolitan areas in the state the means of improving their local governments so that they can provide essential services more effectively and economically. The growth of urban population and the movement of people into suburban areas has created problems relating to water supply, sewage disposal, transportation, parking, parks and parkways, police and fire protection, refuse disposal, health, hospitals, welfare, libraries, air pollution control, housing, urban renewal, planning and zoning. These problems when extending beyond the boundaries of individual units of local government frequently cannot be adequately met by such individual units.

(b) It is the purpose of this act to provide a method whereby the residents of the metropolitan areas may adopt local solutions to these common problems in order that proper growth and development of the metropolitan areas of the state may be assured and the health and welfare of the people residing therein secured.

Section 2. Definitions. As used in this act:

(1) "Central city" means the city having the largest population in the tentative metropolitan area according to the latest Federal decennial census.

(2) "Central county" means the county in which the greatest number of inhabitants of a central city reside.

(3) "Commission" means a metropolitan study commission established pursuant to section 3 of this act.

(4) "Component county" means a county having territory within the tentative metropolitan area.

(5) "Component city" means a city having territory within the tentative metropolitan area.

(6) "Metropolitan area" means an area the boundaries of which are determined by a metropolitan study commission pursuant to sections 9 and 10 of this act.

(7) "Metropolitan services" means any one or more of the following services when provided for all or substantially all of an entire metropolitan area or an entire metropolitan area exclusive of incorporated cities lying therein: (i) planning; (ii) sewage disposal; (iii) water supply; (iv) parks and recreation; (v) public transportation; (vi) fire protection; (vii) police protection; (viii) health; (ix) welfare; (x) hospitals; (xi) refuse collection and disposal; (xii) air pollution control; (xiii) libraries; (xiv) housing; (xv) urban renewal; (xvi) [other].

(8) "Tentative metropolitan area" means the territory of a central city over [ ] population according to the latest Federal decennial census, together with all adjoining territory lying within [ ] miles of any point on the boundaries of the central city.[1]

(9) "Unit of local government" means a county, city or [insert name of other units of general government, such as village, township, or borough] lying, in whole or in part, within a metropolitan area which is providing one or more governmental services listed in subsection (7) of this section.

Section 3. Initiating Election to Establishing a Metropolitan Study Commission. (a) A metropolitan study commission may be established by vote of the qualified voters residing in a tentative metropolitan area. An election to authorize the creation of a metropolitan area study commission may be called pursuant to resolution or petition in the following manner:

(1) A joint resolution requesting such an election may be adopted by a majority of the governing bodies of the counties, cities, [insert names of other types of units of government exercising general government powers] having any jurisdiction within the tentative metropolitan area. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the [governing body] of the central county; or

(2) A petition requesting such an election shall be signed by at least [ ] percent of all the qualified voters residing within the tentative metropolitan area, and shall be filed with the [appropriate official] of the central county. Upon receipt of such a petition, the [appropriate official] shall examine the source and certify to the sufficiency of the signatures thereon. Within 30 days following receipt of such petition, the [appropriate official] shall transmit the same to the [governing body] of the central county together with his certificate as to the sufficiency thereof.[2]

(b) Only one commission may be established for each tentative metropolitan area at any one time.

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[1] The population minimum should be small enough to include just emerging smaller urban areas as well as larger, established ones. The area should cover a substantial part of the developed territory around the central city. The Oregon metropolitan study commission law provides that the central city shall have a population of 25,000 or more and that the limits of the tentative metropolitan area are within 10 miles of the central city boundaries. As an alternative to defining the tentative metropolitan area by distance from the central city, states may wish to use the "standard metropolitan statistical area" employed by the U.S. Bureau of the Census in the most recent nationwide Census of the Population.

[2] Alternatively, establishment of a commission might be authorized by joint or concurrent resolution of governing bodies in the tentative metropolitan area.

Section 4. Election on Establishing Metropolitan Study Commission. (a) The election on the formation of the metropolitan study commission shall be conducted by the [election officials] of the component counties in accordance with [the general election laws of the state] and the results thereof shall be canvassed by the [county canvassing board] of the central county, which shall certify the result of the election to the [insert name of governing body] of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state. Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election for at least thirty days preceding the date of the election. The ballot proposition shall be substantially in the following form:

Establishment of Metropolitan Study Commission

"Shall a metropolitan study commission be established for the area described in a [joint resolution adopted by the governing bodies of [insert names of counties, cities, other units] [petition filed with the [appropriate official] of the central county on the [ ] day of [ ], 19[ ]?

YES . . . .

NO . . . .

(b) If a majority of the persons voting on the proposition residing within the tentative metropolitan area shall vote in favor thereof, the metropolitan study commission shall be deemed to be established.

(c) When the tentative metropolitan area extends beyond the central county, the expenses of the election shall be prorated among all the counties according to each county's share of the total population of the tentative metropolitan area.

Section 5. Selection of Metropolitan Study Commission.

(a) Any study commission established pursuant to this act for a tentative metropolitan area shall consist of members to be selected as follows:

(1) One member selected by the [insert name of governing body] of each component county.

(2) One member selected by the mayor and city council of each component city of at least 2,500 population; but any city having more than [ ] population by the last official United States census shall be entitled to one more member for each additional [ ] of population or fraction thereof.

(3) One member representing all cities under 2,500 population and [insert name of other types of units of general government] to be selected by the [insert name of chief elected official, such a mayor or council president] of such cities and [insert name of other units]; but if the combined

population of such cities and [insert name of other units] exceeds [ ], they shall be entitled to one more member for each [ ] additional population or fraction thereof. The members from such cities and [insert name of other units] shall be elected as follows: The [insert name of chief elective official] of all such units of government shall meet on the second Tuesday following the establishment of a metropolitan study commission and thereafter on [date] of each even-numbered year at [ ] o'clock at the office of the [insert name of governing body] of the central county. The chairman of such [county governing body] shall preside. After nominations are made, ballots shall be taken and the [ ] candidate[s] receiving the highest number of votes cast shall be considered elected.[1]

(4) One member, who shall be chairman of the metropolitan study commission, selected by the other members of the commission.

(b) Each member selected under the provisions of subsection (a) paragraphs (1) and (2) of this section shall reside at the time of his appointment in the [insert name of unit] by which appointed and each member selected under paragraph (3) shall reside at the time of his appointment in one of the cities [or other types of units] participating in the selection.

(c) No member shall be an official or employee of any unit of local government.

Section 6. Time of Appointment. The members of a metropolitan study commission shall be appointed within 60 days after the election establishing the Commission.

Section 7. Meetings of Commission. (a) Not later than 80 days after the election establishing a commission, the members of a commission shall meet and organize at a time which shall be set by the governing body of the central county.

(b) At the first meeting of each commission the member appointed by the [insert name of governing body] of the central county shall serve as temporary chairman. As its first official act the commission shall elect a chairman. The commission shall also elect a vice chairman from among its members.

(c) Further meetings of the commission shall be held upon call of the chairman, the vice chairman in the absence or inability of the chairman, or a majority of the members of the commission.

Section 8. Vacancies, Compensation, Open Meetings, Quorum, Rules. (a) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the member he replaced.

(b) Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(c) All meetings of a commission shall be open to the public.

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[1] If it is desired that each type of general government unit – for example, villages or townships – have separate representation a separate subsection may be provided for each, with same general provisions as in (3).

(d) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(e) Each member shall have one vote. A favorable vote by not less than a majority of the entire commission shall be necessary for any action permitted by section 15 of this act; but other actions may be by a majority of those present and voting. Each commission may adopt such other rules for its proceedings as it deems desirable.

Section 9. Metropolitan Service Boundaries. A commission shall determine the boundaries within which it proposes that one or more metropolitan services be provided. In fixing such boundaries the commission need not conform to the boundaries of the tentative metropolitan area. The boundaries proposed by the commission shall not include part of any city, [insert names of other units of general government, excluding county] unless the whole city, [repeat previous insertion] is included, and shall not divide any existing water, sanitary, park and recreation, fire protection or other special service district unless the comprehensive program, prepared by the commission pursuant to section 11 of this act, will include provisions for the continuance of such service in that part of any such district not included within the boundaries as determined by the commission.

Section 10. Considerations in Setting Boundaries. In recommending boundaries and determining the need for furnishing metropolitan services, a commission shall study and take into consideration:

(1) The area within which metropolitan services are needed at the time of establishment of the commission and for orderly growth of the metropolitan area;

(2) The extent to which needed services are or can be furnished by existing units of local government and the relative cost to the taxpayer and user of such services of having them provided by existing units of local government or as metropolitan services;

(3) The boundaries of existing units of local government;

(4) Population density, distribution and growth;

(5) The existing land use within a metropolitan area, including the location of highways and natural geographic barriers to and routes for transportation;

(6) The true cash value of taxable property and differences in valuation under various possible boundaries for a metropolitan area;

(7) The area within which benefits from metropolitan services would be received and the costs of services borne;

(8) Maintenance of citizen accessibility to, controllability of, and participation in local government;

(9) Such other matters as might affect provision of metropolitan services on an equal basis throughout the area, and provide more efficient and economical administration thereof.

Section 11. Comprehensive Program. The commission shall prepare a comprehensive program for the furnishing of such metropolitan services as it deems desirable in the metropolitan area.

Section 12. Recommendations to Implement Program. In preparing its comprehensive program for furnishing metropolitan services, a commission may recommend one or more of the following courses of action, to take effect at the same or at different times, in accordance with approval procedures provided in sections 14 and 15:

(1) Consolidation of any existing [insert names of units of general government other than county] with any other existing [repeat insert];

(2) Consolidation of any [insert names of units of general government other than county] with the county in which it lies;

(3) Consolidation of two or more counties;

(4) Annexation of unincorporated territory to an existing city;

(5) Consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(6) Creation of a new special service district to perform one or more metropolitan services, with provision for the dissolution of any existing special districts performing like service or services within the proposed boundaries of such new district;

(7) Performance of one or more metropolitan services by any existing unit of local government;

(8) Consolidation of specified metropolitan services by transfer of functions, by creation of joint administrative agencies or by contractual agreements;

(9) Creation of a permanent urban area council, consisting of members of governing bodies of units of local government within the metropolitan area; and

(10) Any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the metropolitan area, or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of this state.

Section 13. Adjustment of Property and Debts. (a) The Commission shall determine the value and amount of all property used in performing any metropolitan service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for metropolitan services and shall determine and provide in its comprehensive program an equitable adjustment of such property and debts of each unit of local government.

(b) After the hearings provided for in section 14 of this act and the adoption by the commission of its comprehensive program, any person aggrieved by the provisions of the program relating to equitable adjustment of property and debts as provided for in subsection (a) of this section may appeal from such provisions to the [insert name of court of general jurisdiction]. Notice of the appeal shall be given to the chairman of the commission 10 days before the appeal is filed with the court. The court shall determine the constitutionality and equity of the adjustment or adjustments proposed and to direct the commission to alter such adjustment or adjustments found by the court to be inequitable or violative of any provision of the Constitution, but any such determination shall not otherwise affect the comprehensive program adopted by the commission.

Section 14. Public Hearings on Proposed Program. Within two years after the date of its organization, a commission shall complete the preparation of its preliminary determination of boundaries and program for furnishing metropolitan services, and shall provide for adequate publication and explanation of the program. The commission shall fix the dates and places for public hearings on the program. Notice of hearings shall be published once each week for at least two weeks preceding a hearing, in at least one newspaper of general circulation in each component county. The notice of hearing shall state the time and place for the hearing.

Section 15. Submission of Recommendation. After public hearing, the commission may submit proposals contained in its comprehensive program for approval as follows: (1) proposals including charters, charter amendments, or any other necessary legal instrument for creation of a new unit of local government shall require approval by a majority of eligible voters thereon in the jurisdiction of the proposed new unit; (2) proposals for abolishing or consolidating existing units of local government, or changing their boundaries, shall require approval by a majority of the eligible voters voting in each of the units affected; (3) any other proposals which are submitted by the commission and which under existing law can be carried into effect by action of the governing bodies of the units affected, shall be effective if approved by a majority of eligible voters voting thereon in each of the units affected.[1] Referendums shall be held at the next state general or primary election, occurring not sooner than 60 days after submission of the proposals by the commission.[2]

Section 16. Effect of Approval. Any proposal approved pursuant to section 15 shall take effect at the time fixed in the proposal, and all laws and charters, and parts thereof, shall be superseded by any proposals adopted under provisions of this act to the extent that they are inconsistent with the proposals adopted.

Section 17. Resubmission and New Program. If any election directed by the commission pursuant to section 15 of this act results in a negative vote, the commission may:

(1) Direct the resubmission of the same issue at a new election to be held not earlier than one year from the date of the election at which such negative vote was cast; or

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[1] Alternatively, the states may wish to consider the Oregon example. Under Oregon law, a commission is authorized to submit proposals to the voters in cases when existing law authorizes initiative and referendum on such proposals. On other proposals, a commission may recommend necessary enabling legislation or charter amendments to the appropriate governing body or the Legislative Assembly.

[2] States may also wish to provide for submission at special elections.

(2) Withdraw its comprehensive program, or that part thereof rejected at such election, and devise a new program which the commission believes will be more acceptable and proceed thereon as specified in sections 14 and 15 of this act.

Section 18. Additional Powers and Duties. A commission shall have the following additional powers and duties:

(1) To contract and cooperate with such other agencies, public or private, as it considers necessary for the rendition and affording of such services, facilities, studies and reports to the commission as will best assist it to carry out the purposes for which the commission was established. Upon request of the chairman of a commission, all state agencies and all counties and other units of local government, and the officers and employees thereof, shall furnish such commission such information as may be necessary for carrying out its functions and as may be available to or procurable by such agencies or units.

(2) To consult and retain such experts, and to employ such clerical and other staff as, in the commission's judgment, may be necessary.

(3) To accept and expend moneys from any public or private source, including the Federal Government. All moneys received by the commission shall be deposited with the county treasurer of the central county. The county treasurer is authorized to disburse funds of the commission on its order.

(4) To do any and all other things as are consistent with and reasonably required to perform its functions under this act.

Section 19. Appropriations. The units of local government of the tentative metropolitan area may appropriate funds for the necessary expenses of the commission.

Section 20. State Matching Funds. In order to encourage and assist in the establishment and operation of metropolitan study commissions, the [if state has office of local government, insert its name] is authorized to enter into cntracts to make grants to metropolitan study commissions to help finance their activities. The amount of any such grant may equal but not exceed the amount of funds appropriated by local units of government pursuant to section 19.

Section 21. Term of Commission. All commissions shall terminate four years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote of three-fourths of the members favorable to such earlier termination.

Section 22. Separability. [Insert separability clause.]

Section 23. Effective Date. [Insert effective date.]

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31-53-00

MUNICIPAL ANNEXATION

New legislative developments in several states in recent years now offer alternatives under which municipal annexation of unincorporated territory can become a more effective process for boundary adjustment in all states. Prior to 1900, the Nation's large cities attained their present size largely through annexation. Around the turn of the century, the process became more difficult as suburbs were established and state constitutions and statutes were changed to forestall their absorption by central cities. Many states gave fringe area residents exclusive authority to initiate annexation proceedings, and required separate majority votes in both the annexing city and the territory to be annexed. New cities and villages gradually were incorporated around the edges of the central cities and amendments to many state annexation laws made it difficult to annex any but unincorporated areas. These changes made extensive inroads on the territory available for annexation by central cities and had a deterrent effect on annexation efforts down through World War II.

In post-war years, under the pressures of burgeoning population and urbanization, there has been a strong upsurge of annexation. Despite this overall trend, however, municipalities in some states still labor under handicaps to an effective annexation procedure. The worst of these are the prohibition against municipalities initiating annexations, and the right of the annexed territory to exercise an irrevocable veto over an annexation. As a result of these and other defects, urban governments in such states sometimes are allowed to extend over vast rural areas, but are barred from clearly urban places; "defensive incorporations" occur in reaction to threatened annexation, causing fragmentation of local government and making coordinated economic development impossible; and the requirement for elections makes neighborhood pride the primary determinant of whether municipal government will be extended. In sum, annexations often can not be completed as urban areas expand, or the procedure is so cumbersome or restrictive as to make annexation lag far behind population expansion.

Responding to these conditions, a number of states in recent years have taken several different statutory approaches to liberalize the annexing powers of municipalities and provide more effectively for extending boundaries in accordance with fringe growth, while at the same time protecting outlying residents against inequitable or arbitrary action. These statutes involve, on one hand, modification of the exclusive power of unincorporated areas to initiate annexation actions and their power to veto proposed annexations; on the other, legislative prescription of rational standards which must be met to assure that annexation is desirable and that the annexed area will receive the benefits which absorption by a municipality are presumed to bestow.

In its 1961 report, *Governmental Structure, Organization and Planning in Metropolitan Areas,* the Commission urged states to "examine types of legislation which in certain states have already been adopted to facilitate desirable municipal annexations, with a view to enacting such facilitative provisions as may be suitable to their respective needs and circumstances." Examples of several such state statutes, and a proposed model act, are described below. In addition the text of one of these state statutes – North Carolina's – is reproduced at the end of this statement, with slight modifications, as an illustration of one possible approach to liberalization of annexation procedures. Individual states may wish to combine parts of the North Carolina approach with other possibilities described.

The North Carolina statute (C. 1009, Laws of 1959), authorizes municipal councils to annex unilaterally. Anexations are limited to contiguous unincorporated territory qualifying under rather detailed standards of urbanization and development. No local vote is required in the annexed areas, but the annexing ordinance is subject to statutory standards with respect to the ability of the municipality to provide municipal services to the annexed area and required criteria of contiguity and urbanization of the annexed area. Judicial relief is provided if statutory standards are not met.

In two states, Minnesota and California, annexation is not unilateral but provision is made for conditions which reduce resistance to annexation in the unincorporated areas. Both provide administrative bodies, for Minnesota at the state level, for California at the county level, with authority to approve or disapprove both annexation and new incorporation. With the power to disapprove new incorporations, these agencies are in a position to prevent unincorporated areas from resorting to defensive incorporations which thwart annexation. In addition, the statutes in both states prescribe factors which must be considered in approving annexations. These include conditions that help assure the annexed territory that it will not be damaged by the annexation. In Minnesota, for example, a guideline that must be considered is "the feasibility and practicability of the annexing territory to provide them governmental services presently or when they become necessary. . ."

The Minnesota law (M.S.A. 414.01 ff.), enacted in 1959, provides for a three-man state commission, appointed by the governor, to review incorporation proposals and to approve all proposals to annex unincorporated territory. A petition for annexation may be initiated by resolution of the annexing municipality or by the freeholders of the territory. The commission may alter the boundaries of a proposed annexation by increasing or decreasing the area. After considering factors outlined in the statute, if the commission approves the annexation, it must be ratified by the residents of the annexed area to become effective. Disapprovals may be appealed to the courts.

The 1963 California legislation established local agency formation commissions with powers to approve or disapprove proposed annexations, municipal incorporations, and creations of special districts (Cal. Govt. Code. Sec., 54765). The commissions, usually consisting of two county officials, two city officials, and one member representing the general public, are formed for each county, and have jurisdiction over proposed annexations within their respective counties. Factors they must consider in reviewing an annexation proposal include population, population density, need for organized community services, and the probable future needs for governmental services and controls. Commission disapproval kills a proposal. Approval means the proposal is submitted to a vote of the people of the area to be annexed and the governing body of the annexing municipality.

Reflecting these and other recent experiences, the Harvard Student Legislative Research Bureau published in 1965 a model act[1] creating a state boundary adjustment board, made up of three members appointed by the governor. The board would have power over annexations, detachments, incorporations, and consolidations, similar to the California commissions. Annexation proceedings could be initiated by the board or by the following: municipal governing bodies, township and county boards, areawide planning bodies, 10 percent of the voters of the municipality or territory, or owners of 25 percent of the assessed value of real property in the territory. Rulings would be made by committees, consisting of the board plus two or more residents representing the county or counties containing the territory affected by the annexation. The statute also prescribes standards which must be met in order for the committees to approve a proposed annexation; for example, the present or probable future character of the territory must be urban or suburban, and the annexed territory must be contiguous to the municipality. It also sets forth criteria which the committees must consider in determining whether the standards have been met. These include the effect of the proposed annexation on the population growth of an assessed value of the real property in the territory and the municipality; and the need for municipal services in the territory. Provision is made for appeal to the courts by any person aggrieved by a decision of the committees. Decision of the committees would not be subject to vote of the people of the territory annexed or the people or governing body of the annexing municipality.

[1] "An Act to Establish Standards and Procedures for Municipal Boundary Adjustment," *Harvard Journal on Legislation,* Vol. 2, No. 2 (June 1965), pp. 239-277.

The draft statute reproduced below is based nearly entirely on the North Carolina statute. Section 1 declares state policy, including orderly extension of municipal boundaries to assure provision of urban services pursuant to legislative standards. Section 2 vests authority to annex in the governing bodies of municipalities of a specified minimum size. Section 3 requires the annexing municipality to make plans for extension of services to the area proposed to be annexed, and sets forth the information to be included in the report of the plans.

Section 5 specifies the character of the area that may be annexed. The area must be adjacent or contiguous to the municipality's boundaries; at least one-eighth of its boundaries must coincide with the municipality's boundaries; and it may not be included within the boundaries of another municipality. Part or all of the area must be developed for urban purposes, which is defined in three alternative ways, reflecting population density, lot size, and land use. The municipality may also include in the area to be annexed certain areas not to be developed for urban purposes, but which constitute necessary land connections between the municipality and areas developed for urban purposes, or between two or more areas developed for urban purposes.

Section 6 prescribes the procedure of annexation, including notice of intent and notice of public hearing, approval of the report of plans, and passage of the annexation ordinance following the public hearing and revision of the original plans as a result of the hearing. The ordinance must include findings that the area to be annexed meets the requirements of section 4; a statement of the municipality's intent to provide services to the area in accord with the report under section 3; a finding that on the date of the annexation the municipality will have funds or borrowing power to finance extension of utility lines or streets to the area; and the effective date of annexation.

In the period 12 to 15 months after the effective date of the annexation, any property owner in the annexed territory who believes that the municipality has not followed through on its service plans may apply for a writ of mandamus from the court, and the court may grant relief if the municipality has not provided the services or facilities according to plan.

Section 7 provides for court appeal by property owners within the annexed area who believe they will be injured materially because of failure of the municipality to comply with the act's procedure. The court may affirm the action of the municipality, remand the ordinance to the municipality for further proceedings to overcome procedural irregularities, reduce the area annexed, or amend the plans for services to the annexed area.

Section 7 provides for recording of the annexation. Section 8 authorizes municipal expenditures for purposes in connection with preparing for the annexation or providing services to the annexed area. Section 9 contains definitions. Section 10 specifies the manner of making population and land estimates for the purposes of the act.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Declaration of Policy. It is hereby declared as a matter of state policy that:

(1) Sound urban development is essential to the continued economic development of this state;

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development;

(3) Municipal boundaries should be extended, in accordance with legislative standards applicable throughout the state, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety, and welfare;

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

Section 2. Definitions. The following terms where used in this act shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Used for residential purposes" shall mean any lot or tract [ ] acres or less in size on which is constructed a habitable dwelling unit.

Section 3. Authority to Annex. The governing board of any municipality having a population of [ ] or more persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this act.

Section 4. Prerequisites to Annexation: Ability to Serve. A municipality exercising authority under this act shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in section 6 of this act, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

(i) The present and proposed boundaries of the municipality.

(ii) The present streets, major trunk water mains, sewer interceptors and outfalls and other utility lines, and the proposed extension of such streets and utility lines as required in paragraph (3) of this section.

(iii) The general land use pattern in the areas to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of section 5 of this act.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

(i) Provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation.

(ii) Provide for extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions.

(iii) If extension of streets and water, sewer or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines as soon as possible following the effective date of annexation. In any event, the plans shall call for contracts to be let and construction to begin within twelve months following the effective date of annexation.

(iv) Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

Section 5. Character of Area to be Annexed. (a) A municipal governing board may extend the municipal corporate limits to include any area:

(1) Which meets the general standards of subsection (b) of this section, and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d) of this section.

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one-eighth of the aggregate external boundaries of the area must coincide with

the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least [ ] percent of the total acreage consists of lots and tracts [ ] acres or less in size and such that at least [ ] percent of the total number of lots and tracts are [ ] acre or less in size; or

(3) Is so developed that at least [ ] percent of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least [ ] percent of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts [ ] acres or less in size.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) of this section if such area either:

(1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or utility lines through such sparsely-developed area; or

(2) Is adjacent, on at least [ ] percent of its external boundary, or any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c) of this section.

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes, but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features, such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than [ ] feet beyond the right-of-way of the street.

Section 6. Procedure of Annexation. (a) Any municipal governing board desiring to annex territory under the provisions of this act shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than [ ] days and not more than [ ] days following passage of the resolution.

(b) The notice of public hearing shall:

(1) Fix the date, hour, and place of the public hearing,

(2) Describe clearly the boundaries of the area under consideration,

(3) State that the report required in section 4 of this act will be available at the office of the municipal official at least [ ] days prior to the date of the public hearing.

Such notice will be given by publication in a newspaper having general circulation in the municipality [ ] a week for at least [ ] successive weeks prior to the date of the hearing. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than [ ] days including Sundays, and the date of the last publication shall not be more than [ ] days preceding the date of the public hearing. If there be no such newspaper, the municipality shall post the notice in at least [ ] public places within the municipality and at least [ ] public places in the area to be annexed for [ ] days prior to the date of public hearing.

(c) At least [ ] days before the date of the public hearing, the governing board shall approve the report provided for in section 4 of this act, and shall make it available to the public at the office of the municipal official. In addition, the municipality may prepare a summary of the full report for public distribution.

(d) At the public hearing, a representative of the municipality shall first make an explanation of the report required in section 4 of this act. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by section 4 of this act, to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of section 4. At any regular or special meeting held no sooner than [ ] days following the public hearing and no later than [ ] days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing, which meets the requirements of section 5 of this act, and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of section 5 of this act. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of subsections 5 (c) and 5 (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by section 4 of this act.

(3) A specific finding that on the effective date of annexation, the municipality will have funds appropriated in sufficient amount to finance construction of any streets or utility lines, found necessary in the report required by section 4 to extend the basic utility system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve months from the date of passage of the ordinance.

(f) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first [ ] years after the effective date of annexation. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed, which was listed for taxation as of said January 1.

(g) If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this act for the annexation of such areas.

(h) If, not earlier than one year from the effective date of annexation, and not later than fifteen months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans, adopted under the provisions of section 4, paragraph (3) and subsection 6 (e), such person may apply for a writ of mandamus under the provisions of [cite appropriate statute]. Relief may be granted by the [court of appropriate jurisdiction]:

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of section 4, subparagraph (3) (i) on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation; and

(2) If at the same time the writ is sought such services set forth in the plan submitted under the provisions of section 4, subparagraph (3) (i) are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality. Relief may also be granted by the [court of appropriate jurisdiction]: (1) if the plans submitted under the provisions of section 4, subparagraph (3) (iii) require the construction of streets or utility services; and (2) if contracts for such construction have not yet been let. If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

Section 7. Appeal. (a) Within thirty days following the passage of annexation ordinance under authority of this act, any person owning property in the annexed property who shall believe that he will suffer material injury, by reason of the failure of the municipal governing board to comply with the procedure set forth in this act or to meet the requirements set forth in section 5 of this act as they apply to his property, may file a petition in the [court of appropriate jurisdiction] of the county in which the municipality is located, seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within [ ] days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within [ ] days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court: (1) a transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth; and (2) a copy of the report setting forth the plans for extending services to the annexed area as required in section 4 of this act.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c) of this section.

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which not question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this act, which review date shall preferably be within [ ] days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either: (1) that the statutory procedure was not followed; or (2) that the provisions of section 4 were not met; or (3) that the provisions of section 5 have not been met.

(g) The court may affirm the action of the governing board without change, or it may:

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of section 5 if it finds that the provisions of section 5 have not been met; but the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality, which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of section 4 of this act are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within [ ] months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any part to the review proceedings, including the municipality, may appeal to the [Appellate or Supreme] Court from the final judgment of the lower court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court; provided, that the lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

Section 8. Annexation Recorded. Whenever the limits of a municipality are enlarged in accordance with the provisions of this act, it shall be the duty of the mayor (or other appropriate official) of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the county official of the county or counties in which such territory is situated and in the office of the secretary of state or other appropriate state official.

Section 9. Authorized Expenditures. Municipalities initiating annexations under the provisions of this act are authorized to make expenditures for surveys required to describe the property under consideration, or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation.

Section 10. Population and Land Estimates. In determining population and degree of land subdivision for purposes of meeting the requirements of section 5 of this act, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in section 5 have been met on appeal to the [court of appropriate jurisdiction] under section 7 of this act, the reviewing court shall accept the estimates of the municipality:

(1) As to population, if the estimate is based on the number of dwelling units in the area, multiplied by the average family size in such area or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; but the court shall not accept such estimates if petitioners demonstrate that such estimates are in error in the amount of [ ] percent or more.

(2) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a

governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of [ ] percent or more.

(3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of [ ] percent or more.

Section 11. Separability. **[Insert separability clause.]**

Section 12. Effective Date. **[Insert effective date.]**

31-58-00

NEIGHBORHOOD SUB-UNITS OF GOVERNMENT

A growing body of opinion points to the need for increasing citizen involvement in the governmental activities of neighborhoods within large cities. Some observers believe that the disappearance of any meaningful sense of community among residents of large cities and counties in our metropolitan areas has been one of the major causes of the "crisis in the cities." The complaint is frequently voiced that the gap between the neighborhood and the city hall or the county building has lengthened continually until the distance seems astronomical rather than a few blocks or a few miles.

States should consider legislation authorizing large cities and county governments in metropolitan areas to establish neighborhood sub-units of government with limited powers of taxation and local self-government.[1] While the establishment of neighborhood centers is by no means the complete answer to the unrest which exists in many of our large cities, there is a definite need to stimulate individual areas to develop programs of neighborhood improvement and self-improvement.

The following suggested legislation authorizes city and county governments to create neighborhood sub-units of government with elected neighborhood governing bodies. The legislation provides that these sub-units may be dissolved at will by the city or county governing body. The legislation is not intended to fragment further local government structure in metropolitan areas. However, it is designed to make it possible, through the neighborhood sub-government device, for existing large units of local government to harness some of the resources and aspirations of their inner communities. The proposed legislation suggests a means through which a local government can actively involve a neighborhood in the governmental process.

Section 1 declares that the purpose of the act is to encourage citizen participation by permitting limited self-government through the establishment of neighborhood councils as legal entities of city or county governments. Section 2 defines a neighborhood service area and a neighborhood area council. Section 3 permits the establishment of neighborhood service areas, and authorizes neighborhood area councils to finance certain governmental services at a different level than the overall city or county tax rate, so that only recipients must pay for a particular service. It should be noted that a constitutional amendment may be necessary in some States in order to permit the use of this device.

Section 4 defines the procedures for establishing a neighborhood service area, and emphasizes local initiative as reflected by the submission of a petition to the city or county by the neighborhood residents. Since the area's success depends largely on neighborhood initiative and local leadership and decisions, no provision is made for a city or county governing body unilaterally to create neighborhood service areas. Section 4 provides for a public hearing and final approval by the city or county governing body of the establishment of these areas. Section 5 permits the extension of the boundaries of an existing neighborhood service area. Section 6 prescribes legislative standards for determining neighborhood service area boundaries, and Section 7 specifies the procedures for dissolution of a service area.

Section 8 provides for the election of council members and the filling of vacancies to serve unexpired terms. Section 9 sets forth council powers and functions. A council may exercise only those powers and functions that are authorized by the city or county governing body. A power may be transferred to a neighborhood council in its entirety or may be shared with the local governing body. Neighborhood councils are authorized to initiate and carry out such self-help projects as supplemental refuse collection, beautification, street fairs and festivals, and cultural activities. Limited budget and finance authority, subject to city or county audit, may be shared or transferred to neighborhood councils for the acceptance of funds from public and private sources to meet overhead costs of administration and costs for services rendered. Neighborhood councils may also levy a uniform tax to finance certain special services.

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[1] Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System* (Washington, D. C., 1967).

Section 10 describes procedures for council meetings and provides that members shall receive no compensation other than that for actual and necessary travel and other expenses incurred in the performance of their duties. Section 11 permits the council to employ a staff consultant, while Section 12 requires the council to make an annual report to the city or county.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize cities and counties to establish neighborhood service areas to advise, undertake, and finance certain governmental services."]

(Be it enacted, etc.)

Section 1. Purpose. It is the purpose of this act to encourage citizen involvement in government at the neighborhood level in urban areas by permitting limited self-government through the establishment of neighborhood councils as legal entities of the city or county government.

Section 2. Definitions. As used herein:

(1) "Metropolitan area" means an area designated as a "standard metropolitan statistical area" by the U. S. Bureau of the Census.[1]

(2) "City" means any municipality of more than [50,000] population, as determined by the latest official census, located within a metropolitan area.

(3) "County" means any county located, in whole or in part, within a metropolitan area.

(4) "Neighborhood service area" means an area within a city or county, located within a metropolitan area, with limited powers of taxation and local self-government.

(5) "Council" means a neighborhood area council created by section 8 of this act to govern a neighborhood service area.

Section 3. Establishment of Neighborhood Service Areas. The [governing body] of any city or county located within a metropolitan area may establish within its borders one or more neighborhood service areas to provide and finance those governmental services or functions that the city or county is otherwise authorized to undertake, notwithstanding any provision of law requiring uniform property tax rates on real or personal property within the city of county.[2]

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[1] Particular states may find it necessary for constitutional reasons, or otherwise desirable, to apply a somewhat different definition, tailored to their special circumstances.

[2] If a service is to be financed wholly or partly from property tax revenues, some states may have to amend constitutional provisions which require uniform tax rates within a city or county.

Section 4. Creation By Petition. (a) A petition signed by [ ] percent of the [qualified voters] [residents] within any portion of a city or county may be submitted to the city [governing body] or county [governing body] requesting the establishment of a neighborhood service area to provide any service or services which the city or county is otherwise authorized by law to provide. The petition shall describe the territorial boundaries of the proposed service area and shall specify the services to be provided.

(b) Upon receipt of the petition and verification of the signatures thereon, the city [governing body] or county [governing body], within [30] days following verification, shall hold a public hearing on the question of whether or not the requested neighborhood service area shall be established.

(c) Within [30] days following the public hearing, the city [governing body] or county [governing body], by resolution shall approve or disapprove the establishment of the requested neighborhood service area. A hearing may be adjourned from time to time, but shall be completed within [60] days of its commencement.

(d) A resolution approving the creation of the neighborhood service area may contain amendments or modifications of the area's boundaries or functions as set forth in the petition.

Section 5. Boundary Changes of a Neighborhood Service Area. The city [governing body] or county [governing body], pursuant to a request from the council, or pursuant to a petition signed by at least [ ] percent of the qualified voters living within the neighborhood service area, may enlarge, diminish, or otherwise alter the boundaries of any existing neighborhood service area following the procedures set forth in section 4 (b), (c), and (d).

Section 6. Considerations in Setting Boundaries. In establishing neighborhood service area boundaries and determining those services to be undertaken by the neighborhood area council, the city [governing body] or the county [governing body] shall study and take into consideration the following:

(1) The extent to which the area constitutes a neighborhood with common concerns and a capacity for local neighborhood initiative, leadership, and decision-making with respect to city or county government;

(2) City or county departmental and agency authority and resources over functions that may be either transferred or shared with the council;

(3) Population density, distribution, and growth within a neighborhood service area to assure that its boundaries reflect the most effective territory for local participation and control;

(4) Citizen accessibility to, controllability of, and participation in neighborhood service area activities and functions; and

(5) Such other matters as might affect the establishment of boundaries and services which would provide for more meaningful citizen participation in city or county government.

Section 7. Dissolution of Neighborhood Service Area. (a) A city [governing body] or county [governing body], after public hearing, may dissolve a neighborhood service area on its own initiative or pursuant to a petition signed by at least [ ] percent of the qualified voters living within the neighborhood service area.

(b) The city [governing body] or county [governing body] shall give notice of a public hearing in [ ] newspapers of general circulation in the neighborhood service area of its intention to hold a public hearing on a proposed dissolution, the notice to be given not less than [14] days before the date at the public hearing.

Section 8. Election of Council; Vacancies.

(a) The council shall consist of [five to nine] members. The term of office of each member shall be [four] years, and members shall serve until their successors are elected and qualified.

(b) The council members shall be elected at large by the voters of the neighborhood service area at the time as provided by law for holding general elections. Members shall be residents of the neighborhood service area who are qualified to vote in elections for local government officials.

(c) A vacancy shall be filled by the [council] [city [governing body] or county [governing body]]. Members so appointed shall serve for the remainder of the unexpired term.

Section 9. Council Powers and Functions. A council may exercise any powers and perform any functions within the neighborhood service area authorized by the city [governing body] or county [governing body], which may include but not be limited to:

(1) Advisory or delegated substantive authority, or both, with respect to such programs as the community action program; urban renewal, relocation, public housing, planning and zoning actions, and other physical development programs; crime prevention and juvenile delinquency programs; health services; code inspection; recreation; education; and manpower training;

(2) Self-help projects, such as supplemental refuse collection, beautification, minor street and sidewalk repair, establishment and maintenance of neighborhood community centers, street fairs and festivals, cultural activities, recreation, and housing rehabilitation and sale;

(3) Budget and finance authority, subject to city or county audit, to accept funds from public and private sources, including public subscriptions, and to expend monies to meet overhead costs of council administration and support for self-help projects; and authority to raise revenue for special services by adoption of a uniform annual levy, not to exceed [five (5)] dollars, on each [resident] [head of household] of the neighborhood service area.

Section 10. Compensation; Meetings; By-Laws; Quorum.

(a) Members of a council shall receive no compensation but may receive reimbursement of actual and necessary travel and other expenses incurred in the performance of official duties, up to a maximum of [ ] dollars in any one calendar year.

(b) All meetings of a council shall be open to the public.

(c) A council shall adopt by-laws providing for the conduct of its business and the selection of a presiding officer and other officers.

(d) A majority of the members of a council shall constitute a quorum for the transaction of business. Each member shall have one vote.

***Section 11. Staff.* The council may employ staff and consult and retain experts as it deems necessary.**

***Section 12. Annual Report.* The council shall make an annual report of its activities to the city or county.**

***Section 13. Separability.* [Insert separability clause.]**

***Section 14. Effective Date.* [Insert effective date.]**

31-59-00

OPTIONAL FORMS OF MUNICIPAL GOVERNMENT

The city charter provides a framework for the powers of local government and has a fundamental influence on the way in which they are exercised. It can serve to facilitate the provision of services and provide a government responsive to the needs of its residents or it can become an impediment, limiting the value and responsiveness of local government.

As the nation becomes increasingly urbanized, the maximum flexibility in framing charters is desirable to allow localities to meet changing conditions and demands placed upon them. In its study of local government organization and structure, ***State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Government,*** the Advisory Commission on Intergovernmental Relations concluded that if local government is to be made more effective and responsive and if further unnecessary centralization at higher levels is to be avoided, local citizens, within general guidelines and subject to certain necessary limitations particularly in the case of metropolitan areas, must be enabled to select the form of government judged by them to be most appropriate for their particular circumstances. The Commission recommended that optional forms of municipal government be made available. The Commission concluded that a strong executive form of local government should be encouraged and that all classes of municipalities should be empowered to appoint all city officers other council members and the mayor (if a mayor is provided for). These objectives are reflected in the model legislation. Determinations regarding selection, appointment, terms and salaries of all officers and employees, except for the governing body, are left to the discretion of the municipality. In some states, of course, where provisions for a number of local offices are already imbedded in the constitution, amendments to remove them from the constitution would be necessary before the full effect of the provisions in the model would be achieved.

The range of choice available in framing local charters currently varies considerably from state to state and among types of municipalities within a given state. Over two-thirds of the states have some provision for classification of municipalities by size and for the provision of varying choices of organizational structure depending on the classification. Some few states grant virtually all charters by special act of the legislature. In another group of states, all municipalities within a given class must be organized on a similar basis, sometimes with a limited number of options regarding size of council, types of election, and the area from which councilment will be elected. In the so-called "optional charter" states, municipalities are given a wider range of choices of charters from among which to choose. These will normally include at least the mayor-council, council-manager, and commission form of government and frequently will also provide for the weak mayor-council form in which the mayor is the presiding officer of the council with power to vote only in case of a tie. There may also be an option in which a chief administrative officer is specifically established by charter in a mayor-council municipality. Finally, over half of the states have constitutional or statutory provisions empowering localities to frame their own charters within broad procedural and substantive guidelines.

The following suggested optional municipal charter law is designed to provide flexibility to municipalities in selecting their charters, while supplying necessary basic guidelines. The model, based on the 1950 New Jersey Optional Municipal Charter Law, presents the options of a strong mayor-council or a council-manager form of government with additional options regarding the size of the governing body; its election from wards, at large, or both; and its election on a partisan or nonpartisan basis. The option of a chief executive officer as the mayor's assistant in the mayor-council form is also included. The inclusion of these specific options gives a broad opportunity to citizens for the selection of particular features which they may believe essential for their community's development, while providing assurance that the charters will be technically in conformance with all the requirements of state law. Under the act, a charter commission may be elected to study the local government and make a recommendation for no change, amendments to the existing charter, or one of the optional charters. There is also an opportunity for a community in which a general consensus may have been arrived at to petition for a referendum on one of the available optional forms without recourse to a charter commission.

The model consists of five articles. Article 1 provides the basic procedure for the selection, organization, and functions of the charter commission and for the presentation of an optional plan. Article 2 deals with the legal status of an approved charter and the applicable general law and with the general powers of municipalities under the act. Articles 3 and 4 present the mayor-council and council-manager plan. Article 5 consists of transitional provision for going from the former to the new charter.

Sections 1 through 10 provide for an ordinance or a referendum to establish a charter commission and for its election and duties, and its report and discharge. A charter commission is empowered by section 11 to recommend that the existing charter be amended, a referendum be held on one of the optional forms of government, or that the form of government of the municipality remain unchanged. Sections 12 through 15 provide for a referendum on adoption of optional plans and for a request to the legislature for amendments to an existing charter and prohibit a petition for the election of a charter commission while any other petitions regarding charter changes are pending or within four years after the submission of a petition. Sections 16 through 19 provide for the adoption of an optional plan by direct petition and referendum of the voters. Sections 20 through 22 affirm the taking effect of a charter upon approval, declare it to be a complete form of government, and prohibit subsequent votes on changes for a designated period. Section 23 provides for the abandonment of an optional plan and prohibits a vote on abandonment oftener than once every five years.

In article 2, section 24 deals with the laws applicable after adoption of an optional form of government, section 25 provides for the continuation of a municipality as a body corporate and politic and section 26 defines "general law" to which municipalities will be subject. Sections 27 and 28 should be considered in connection with existing constitutional and statutory provisions conferring functional home-rule powers on municipalities. The two sections affirm the normal corporate powers of municipal corporations, provide for authority to organize and regulate internal affairs, and call for liberal construction of the powers but do not deal with specific functional authority such as the police power, the construction and operation of public works, and the exercise of other program, regulatory, and service powers of local government. The Advisory Commission in its report recommended that home rule to provide for the structure and organization of local government be treated separate from function home rule. The Commission has recommended a residual powers approach to constitutional functional home rule. A suggested constitutional amendment providing such authority appears in this volume (31-22-00).

Sections 29 through 48 (article 3) constitute the provisions for the mayor-council plan of government. Under the provisions of section 32 there is an independently elected mayor who under sections 39, 40, and 46 is given the executive authority of the municipalityto appoint department heads, enforce the charter and ordinances, prepare the budget, and in other respects act as chief executive. Section 33 provides for the size, manner of election, and terms of council members with alternatives regarding the number of members; their election on a partisan or nonpartisan basis; their election at large, from wards, or both; the length of their terms and whether they are staggered or concurrent; and the date of election and of taking office. Provision is made in section 43 for a chief administrative officer. The option is provided either to have him appointed by the mayor with the advice and consent of the council or to have him appointed by the mayor without council action. In either case he would not be subject to Civil Service regulations. Provision is also made for deputy department directors not subject to Civil Service regulations in larger municipalities. Section 43 delegates to the council the authority to establish by ordinance other administrative departments with directors appointed by the mayor with the advice and consent of the council. The mayor is given the discretion of removing department heads after notice and hearing. Sections 45 through 48 provide for the preparation of the budget by the mayor with assistance of the CAO if desired, its submission to and consideration by the council, the development of a system of work programs and quarterly allotments, and a post-audit system.

Sections 49 through 66 (article 4) present the council-manager option of local government. The same options as those in section 33 for the mayor-council form of government are provided in section 51 for the council. Under the provisions of sections 53 and 54 the mayor is chosen by the council to preside

at meetings and to execute bonds, notes, contracts and written obligations of the municipality. If there is a desire for popular election of a mayor with similar functions to serve as a political leader, the National Municipal League's Model City Charter alternative form may be consulted. Section 56 provides for the appointment of a municipal manager and clerk, who may be the same person, by the municipal council. Section 57 authorizes the council to continue or create executive administrative departments and determine and define their powers and duties. Sections 59 through 64 confer powers upon the manager as the chief executive and administrative official of the municipality and provide for the preparation of the budget and establishment of work program and quarterly allotments by him. Section 65 provides that laws conferring powers upon the mayor or other executive head of a municipality shall be construed as meaning the municipal manager in a municipality governed by article 4.

Article 5 consists of transitional provisions. Sections 67 through 72 provide for the designation of election district lines by the existing council in those municipalties choosing the district option for election of councilmen. Sections 73 through 76 deal with the schedule of the installation of the optional plan adopted, superseded charters, existing offices abolished upon the effective date of the new charter, and pending actions and proceedings.

Since the emphasis in the suggested legislation is on the basic structure and form of government, the optional charters do not include provisions dealing with planning, the capital program and budget, election procedures, personnel administration, or direct legislation (initiative, referendum, and recall) which may be incorporated into basic charters. It is assumed that general state laws and local ordinances will cover these matters.

Information regarding the New Jersey law upon which the draft is based and experience under it over a period of 15 years is available in a report entitled *New Jersey's Optional Municipal Charter Law* published by the National Municipal League. While the specific form of the options presented in the New Jersey act is somewhat different and while there are other differences, the general discussion and descriptive material, the review of experience under the act, and the citation to judicial rulings provide useful annotation.

In some states the legislature may lack authority to provide optional forms of local government. The following constitutional language would provide a clear constitutional direction to the legislature:

The legislature shall by general law provide optional forms of government for [cities, towns, villages, municipalities] .

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing optional forms of municipal government."]

(Be it enacted, etc.)

ARTICLE 1. PROCEDURE FOR ADOPTION OF OPTIONAL CHARTER PLANS

A. Charter Commission

Section 1. Election on Question of Establishing Charter Commission. **(a) Whenever authorized by ordinance of the governing body or upon petition of the registered voters of any municipality, an election shall be held in the municipality upon the question: "Shall a charter commission be elected**

to study the charter of [ ] and to consider a new charter or improvements in the present charter and to make recommendations thereon?" The petition calling for such election shall be in the form required by subsection (b) hereof and shall be signed by the following per centum of registered voters of the municipality:

[25]% in municipalities of [7,000] or less inhabitants;
[20]% in municipalities of more than [7,000] and less than [70,000] inhabitants;
[10]% in municipalities of [70,000] or more inhabitants.

In either event, the municipal clerk shall provide for the submission of the question and for the election of a charter commission at the next general or regular municipal election, occuring not less than [75] days after the passage of the ordinance or the filing of the petition with the clerk. At the election the question above stated shall be submitted as other public questions are submitted to the voters of a single municipality.

(b) A petition under this section shall conform to the requirements of form for petitions under [cite existing initiative and referendum or other appropriate petition procedure] (except that there shall be no reference therein to any ordinance) and shall be subject to examination, certification, and amendment as therein provided.

Section 2. Election of Charter Commission Members at Same Time Public Question is Submitted. A charter commission of [five] members shall be elected by the qualified voters at the same time as the public question is submitted. Duly nominated candidates for the office of charter commissioner shall be placed upon the ballot containing the public question in the same manner as is provided by law for candidates nominated by petition for other offices elective by the people of a single municipality, except that they shall be listed without any designation or slogan. Each voter shall be instructed to vote on the question and, regardless of the manner of his vote on the question, to vote for [five] members of a charter commission who shall serve if the question is determined in the affirmative.

Section 3. Candidates for Charter Commission; Nomination. Candidates for the charter commission shall be registered voters of the municipality. They may be nominated by petition signed by at least [three] per centum [3]%, but not less than [ten], of the registered voters of the municipality, and filed with the municipal clerk not less than [sixty] days prior to the date of the election.

(a) Each nominating petition shall set forth the names, places of residence, and post-office addresses of the candidate or candidates thereby nominated, that the nomination is for the office of charter commissioner and that the petitioners are legally qualified to vote for such candidate or candidates. Every voter signing a nominating petition shall add to his signature, his place of residence, post-office address and street number, if any. No voter shall sign a petition or petitions for more than [five] candidates.

(b) Each nominating petition shall, before it may be filed with the municipal clerk, contain an acceptance of such nomination in writing, signed by the candidate or candidates therein nominated, upon or annexed to such petition, or if the same person or persons be named in more than one petition, upon or annexed to one of such petitions. Such acceptance shall certify that the candidate is a registered voter of the municipality, that the nominee consents to stand as a candidate at the election and that if elected he agrees to take office and serve.

(c) Each nominating petition shall be verified by an oath or affirmation of one or more of the signers thereof, taken and subscribed before a person qualified under the laws of [ ] to administer an oath, to the effect that the petition was signed by each of the signers thereof in his proper handwriting, that the signers are, to the best knowledge and belief of the affiant, registered voters of the municipality, and that the petition is prepared and filed in good faith for the sole purpose of endorsing the person or persons named therein for election as stated in the petition.

Section 4. Canvass of Election. The result of the votes cast for and against the adoption of the public question shall be returned by the election officers, and a canvass of such election had, as is provided by law in the case of other public questions put to the voters of a single municipality. The votes cast for members of the charter commission shall be counted and the result thereof returned by the election officers, and a canvass of such election had as is provided by law in the case of the election of members of the local governing body. The [five] candidates receiving the greatest number of votes shall be elected and shall constitute the charter commission, but if a majority of those voting on the public question shall vote against the election of a charter commission, none of the candidates shall be elected. If two or more candidates shall be equal and greatest in votes they shall draw lots to determine which one shall be elected.

Section 5. Organization of Charter Commission. As soon as possible and in any event no later than fifteen days after its election, the charter commission shall organize and hold its first meeting and elect one of its members as chairman, fix its hours and place of meeting, and adopt such rules for the conduct of its business as it may deem necessary and advisable. A majority of the members of said commission shall constitute a quorum for the transaction of business but no recommendation of said commission shall have any legal effect pursuant to sections 13 and 14 of this act unless adopted by a majority of the whole number of the members of the commission.

Section 6. Vacancies in Charter Commission. In any case of any vacancy in the charter commission, the remaining members of such commission shall fill it by appointing thereto some other properly qualified citizen.

Section 7. Duties of Charter Commission–Study and Reports. (a) It shall be the function and duty of the charter commission to study the form of government of the municipality, to compare it with other available forms under the laws of this state, to determine whether its operation could be more economical or efficient, under a changed form of government.

(b) The charter commission shall report its findings and recommendations to the citizens of the municipality within [nine] calendar months from the date of its election. For this purpose it shall file with the municipal clerk an original signed copy of any final report containing its findings and recommendations. It shall also deliver to the municipal clerk sufficient copies of any such report to permit distribution to any interested citizen. The municipal clerk shall deliver a copy of any such report to each member of the governing body. If the charter commission, or any member or members thereof, recommended the adoption of any of the optional plans of government as authorized in paragraph (1) of section 11. The report shall contain the complete plan as recommended.

Section 8. Expenses of Commission Members; Consultants and Assistants. Members of the charter commission shall serve without compensation but shall be reimbursed by the municipality for their necessary expenses incurred in the performance of their duties.

The municipal governing body of any municipality within which a charter commission has been established pursuant to the provisions of this act shall make an appropriation sufficient to enable the charter commission to carry out its duties. Within the limits of the appropriation and such privately contributed funds and services as shall be made available to it, the charter commission may appoint one or more consultants and clerical and other assistants to serve at the pleasure of the commission and may fix a reasonable compensation to be paid such consultants and clerical and other assistants.

Section 9. Hearings; Public Forums. The charter commission shall hold public hearings and sponsor public forums and generally shall provide for the widest possible public information and discussion respecting the purposes and progress of its work.

Section 10. Discharge of Charter Commission; Amended Report. The charter commission shall be discharged upon the filing of its report; but if the commission's recommendations require further procedure on the part of the governing body or the people of the municipality pursuant to section 13 or 14 of this act, the commission shall not be discharged until the procedure required under those sections has been finally concluded.

Section 11. Reports and Recommendations Which the Commission May Make. The charter commission may report and recommend that:

(1) a referendum shall be held to submit to the qualified voters of the municipality the question of adopting one of the optional forms of government authorized in article 3 or 4 of this act, to be specified by the commission; or

(2) the governing body shall petition the legislature for the enactment of one or more specific amendments of or to the charter of the municipality, the text of which shall be appended to the charter commission's report pursuant to [cite appropriate constitutional and statutory provisions for amending existing charters granted under general or special laws] to the extent that such legislation is not inconsistent herewith; or

(3) the form of government of the municipality shall remain unchanged; or

(4) such other action to be taken as it may deem advisable, consistent with its functions as set forth in section 7 of this article.

Section 12. Form of Submission of Question of Adoption of Optional Plans of Government. The question to be submitted to the voters for the adoption of any of the optional plans of government authorized by articles 3 and 4 of this act shall be submitted in the following form:

"Shall [insert name of plan] of the Optional Municipal Charter Law, be adopted by [insert name of municipality] ?"

Section 13. Ballots; Submission of Question of Adoption of Optional Form of Government. If the charter commission recommends that the question of adopting one of the optional forms of government authorized by articles 3 or 4 of this act shall be submitted to the voters of the municipality, it shall be the duty of the municipal clerk to cause the question of adoption or rejection to be placed upon the ballot at such time as the commission shall in its report specify. The commission may cause the question to be submitted to the people at the next general or regular municipal election, occurring not less than [sixty] days following the filing of a copy of the commission's report with the clerk, or at a special election occuring not less than [sixty] days or more than [one hundred twenty] days after the filing of the report, at such time as the commission's report shall direct. At such election the question of adopting that form of government recommended by the charter commission shall be submitted to the voters of the municipality in the same manner as other public questions to be voted upon by the voters of a single municipality. The charter commission shall frame the question to be placed upon the ballot as provided in section 12, and, if it deems appropriate, an interpretative statement to accompany such question.

Section 14. Request for Legislative Action on Amendments to Existing Charter. If the charter commission proposes a specific amendment or amendments to the existing charter of the municipality, [it is the duty of the governing body of the municipality forthwith to petition the legislature for [appropriate action] pursuant to [cite appropriate constitutional and statutory provision for amending existing charters granted under general or special laws] to carry out the recommendations of the charter commission] [the council shall amend the charter].

Section 15. Limitation on Proceedings. No ordinance may be passed and no petition may be filed for the election of a charter commission pursuant to section 1 of this act while proceedings are pending under any other petition or ordinance filed or passed under article 1 of this act, or while proceedings are pending pursuant to sections 16 through 18 hereof [or any other statute providing for the adoption of any other charter or form of government available to the municipality], nor within [four] years after an election shall have been held pursuant to any such ordinance or petition passed or filed pursuant to section 1 hereof.

B. Procedure to Adopt Optional Plan by Petition and Referendum

Section 16. Adoption of Optional Plan Without Charter Commission. The legally qualified voters of any municipality may adopt any of the optional plans provided in articles 3 or 4 of this act upon petition and referendum, without a charter commission, as hereinafter provided.

Section 17. Petition for Election on the Adoption of Optional Plan of Government. Upon petition of the registered voters of any municipality, an election shall be held in the municipality upon the question of adopting any of the optional plans of government provided in articles 3 and 4 of this act. The petition calling for such election shall be subject to the provisions of section 1 hereof and shall be signed by the following per centum of registered voters of the municipality:

(1) [25]% in municipalities of [7,000] or less inhabitants;

(2) [20]% in municipalities of more than [7,000] and less than [70,000] inhabitants;

(3) [10]% in municipalities of [70,000] or more inhabitants.

The petition shall designate the plan to be voted upon, and the question to be placed upon the ballot shall be in the same form as is required by section 12 of this article.

Section 18. Submission of Question. The municipal clerk shall provide for the submission of the question at the next general or regular municipal election if one is to be held not less than [sixty] days nor more than [one hundred twenty] days after the filing of the petition, and if a general or regular municipal election is not be be held within that time, at a special election within such time. The question of adoption of an optional plan of government shall be submitted to the voters of the municipality in the same manner as other public questions to be voted upon by the voters of a single municipality.

Section 19. Limitation on Proceedings. No petition for submission of the question of adopting an optional plan of government pursuant to sections 16 through 18 of this act may be filed while proceedings are pending pursuant to another such petition, or under an ordinance passed or petition filed pursuant to section 1 of this act, [or while proceedings are pending pursuant to any other statute for the adoption of any other charter or form of government available to the municipality], nor within [four] years after an election shall have been held pursuant to any such petition filed pursuant to sections 16 through 18 of this act.

C. Provisions Applicable To All Referenda On Charter Changes

Section 20. Vote in Favor of Change in Form of Government. Whenever the legally qualified voters of any municipality by a majority of those voting on the question, vote in favor of adopting a change in their form of government pursuant to this act, either by the charter commission method or by direct petition and referendum, the proposed charter or charter amendment or amendments shall take effect according to its terms.

Section 21. Limitation on Votes or Subsequent Change. The voters of any municipality which has adopted an optional form of government pursuant to this act may not vote on the question of adopting another form of government until [five] years thereafter.

Section 22. Each Optional Form a Complete Form of Government. For the purposes of this act each of the optional forms of government provided in articles 3 or 4 of this act, and each of said optional forms as modified by any available provisions concerning size of council and number of wards, is hereby declared to be a complete and separate form of government for submission to the voters of the municipality.

D. Abandonment of An Optional Plan and Reversion To a Prior Form

Section 23. Petition and Referendum on Reversion to Prior Plan. Any municipality may, subject to the provisions of section 21 of this act, abandon its optional plan and revert to the form of government under which it was governed immediately prior thereto, upon the filing of a petition and referendum as follows:

(1) Upon petition of the registered voters of the municipality signed by the same number thereof as required in section 17, for an election to submit the question of abandonment and reversion as herein provided, the municipal clerk shall provide for submission of the question in like manner as provided in section 18.

(2) The form of the question shall be as follows: Shall [name of municipality] abandon its present form of government and revert to its prior form of government, known as [popular name of plan] as provided by [statutory reference of prior plan]?

(3) If a majority of those voting on the question vote in the affirmative the municipality shall revert to its prior form of government as of twelve o'clock noon of the sixtieth day following the election of officers under the form of government to which the municipality will revert. [The first officers under such form of government shall be elected at the next regular municipal or general election, as the case may be, at which officers under the form of government to which the municipality will revert would be elected if such form were then in effect in the municipality.][1] It shall be the duty of the municipal clerk to perform all the duties respecting such election as would be required of a municipal clerk for elections under the form of government to which the municipality will revert. Whenever a municipality

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[1] In some states a more detailed provision may be necessary to accommodate its terms of office and election procedures.

has reverted to any form of government providing for elections with party designation, at a later date than the one fixed for the filing of nominating petitions at the primary election, the candidates to be first elected shall be nominated by direct petition in the manner provided by law for nomination by direct petition for a general election.

If a majority of those voting on the question vote in the negative, the question of abandonment and reversion shall not again be submitted for [five] years.

(4) The reversion to a prior form of government shall take effect as provided in article 5 of this act for transition to an optional plan hereunder.

ARTICLE 2. INCORPORATION AND POWERS

Section 24. Laws Governing After Adoption of Optional and Alternative Forms of Government. Upon the adoption by the qualified voters of any municipality of any of the optional forms of government set forth in this act, the municipality shall thereafter be governed by the plan adopted, by the provisions of this act common to optional plans, and by all applicable provisions of general law, subject to the transitional provisions of article 5 of this act, unless and until the municipality should adopt another form of government as provided by law.

Section 25. Municipality Remains Body Corporate and Politic. Upon such adoption of a plan under this act, the inhabitants of any municipality or municipalities within the corporate limits as now or hereafter established shall be and remain a body corporate and politic with perpetual succession, and with such corporate name as it has adopted or may adopt.

Section 26. "General Law" Defined. For the purposes of this act a "general law" shall be deemed to be any law or provision of law, not inconsistent with this act, which is by its terms applicable or available to [all municipalities] [municipalities of designated classes] and the following additional laws whether or not such additional laws are applicable or available to [all municipalities] [municipalities of designated classes].[1]

Section 27. General Powers of Municipalities Governed by an Optional Form of Government.[2] Each municipality governed by an optional form of government pursuant to this act shall, subject to the provisions of this act or other general laws, have full power to:

(1) organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions

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[1] States may wish to reserve authority to the legislature to act by other than general law applicable to all municipalities or to designated classes of municipalities in some areas such as taxation, for example.

[2] States with broad constitutional or general law functional home rule provisions such as provided in "Local Government Residual Powers," 31-22-00 of this volume or the home rule section on p. 16 of the National Municipal League's *Model State Constitution,* may not need all of these specific grants of powers. On the other hand, states without home rule provisions or with narrowly construed home rule provisions, may want to add additional functional powers, such as those in section 40:69A-29 (b) of the New Jersey Optional Municipal Charters Act (N. J. Stats. Ann.).

and employments and to define the functions, power and duties thereof and fix their term, tenure, and compensation;

(2) sue and be sued, to have a corporate seal, to contract and be contracted with, to buy, sell, lease, hold and dispose of real and personal property, to appropriate and expend moneys, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof;

(3) exercise powers of condemnation, borrowing and taxation in the manner provided by general law.

Section 28. Power of Local Self-Government; Construction of Grants of Power. The general grant of municipal power contained in this article is intended to confer the greatest power of local self-government consistent with the constitution of this state. Any specific enumeration of municipal powers contained in this act or in any other general law shall not be construed in any way to limit the general description of power contained in this article, and any such specifically enumerated municipal powers shall be construed as in addition and supplementary to the powers conferred in general terms by this article. All grants of municipal power to municipalities governed by an optional alternative plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed [as required by the constitution of this state] in favor of the municipality.

ARTICLE 3. MAYOR-COUNCIL PLAN

A. Form of Government

Section 29. Applicable Form. The form of government provided in this article shall be known as the "mayor-council plan" and shall, together with articles 2 and 5, govern any municipality, the voters of which have adopted it pursuant to this act.

Section 30. Council, Mayor, and Appointed Officers and Employees. The government of the municipality under this article shall consist of an elected council, an elected mayor, and such other officers and employees as may be duly appointed pursuant to this article, general law, or ordinance.

Section 31. Election Districts.[1] The municipality shall be divided into [two to nine election districts].

B. Elected Officials

Section 32. Election of Mayor and Term.[2] The mayor shall be elected by the voters of the municipality [at a regular municipal election] [at the general election to be held on the first Tuesday after the first Monday in November or at such other time as may be provided by law for holding general elections] and shall serve for a term of [four] years beginning on the first day of [July next following his election] [January next following his election].

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[1] The number of election districts will depend on the number of council members chosen under section 33 and whether they are to be elected entirely from districts or some from districts and some at large.

[2] The choice between alternative election and inaugural dates would depend on provisions for other local government, a primary consideration being whether the office is to be partisan or nonpartisan.

Section 33. Election of Council Members and Term.[1] (a) The council shall consist of [five to nine] members. Councilmen shall serve for a term of [four] years [except as hereinafter provided for those first elected], beginning on the first day of [July next following their election] [January next following their election]. They shall be elected [at large] [at large and by election districts] [by election districts], [at regular municipal elections] [at the general election to be held on the first Tuesday after the first Monday in November or at such other times as may be provided by law for holding general elections].

[(b) Council members shall be elected in the following manner:

(1) in a municipality having two election districts and five councilmen, one councilman shall be elected from each election district and three at large;

(2) in a municipality having three election districts and five councilmen, one councilman shall be elected from each election district and two at large;

(3) etc.][2]

[(c) At the first election as provided in [cite appropriate election laws or code] following the adoption by a municipality of this plan, [five, seven, or nine] councilmen shall be elected and shall serve for the following terms: if the municipal council is to consist of five members, two shall serve for four years and three for two years; if the municipal council is to consist of seven members, three shall serve for four years and four for two years; if the municipal council is to consist of nine members, four shall serve for four years and five for two years. The length of the term of the respective members of the first council shall be determined by lot immediately after the organization of the council next following the election.][3]

[(d) At the first election as provided in [cite appropriate section laws or code] following the adoption by a municipality of this plan [five, seven, or nine] councilmen shall be elected. The councilmen elected at large shall serve for a term of four years and the councilmen elected from election districts, for a term of two years.][4]

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[1] States wishing to specify a minimum local population required for organization into election districts and wishing to relate the number of districts to total population are referred to the provision in the Ohio optional charter law, section 705.72, *Ohio Revised Code Annotated*, 1954. States wishing to consider the additional option of at-large elections with nominations by district are referred to the National Municipal League, *Model City Charter*, alternative section 2.01, p. 5.

[2] Optional subsection (b) is to be used if a combination of ward and at-large elections are desired.

[3] Optional subsection (c) to be used if staggered terms are desired with at-large elections.

[4] Optional subsection (d) to be used if staggered terms are desired with a combination of election districts and at-large election.

Section 34. Vacancies in Elective Offices. Vacancies in any elective office shall be filled by election for the remainder of the unexpired term at the next general election occurring not less than sixty days after the occurrence of the vacancy. Such election to fill a vacancy shall be upon direct nomination by petition in the manner provided by law for the filling of vacancies in municipal offices where candidates are nominated by direct petition for a general election. The council shall fill vacancies temporarily by appointment to serve until the qualification of a person so elected.

C. Council

Section 35. Legislative Power. The legislative power of the municipality shall be exercised by the municipal council, except as may be otherwise provided by general law.

Section 36. Presiding Officer. The council shall elect a presiding officer from among its members.

Section 37. Removal of Officers. The council, in addition to such other powers and duties as may be conferred upon it by this charter or otherwise by general law, may:

(1) require any municipal officer, in its discretion, to prepare and submit sworn statements regarding his official duties in the performance thereof, and otherwise to investigate the conduct of any department, office or agency of the municipal government;

(2) remove any municipal officer, other than the mayor or a member of the council, for cause, upon notice and an opportunity to be heard.

Section 38. Municipal Clerk. The council shall appoint a municipal clerk, who shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this act requires, and perform such functions as may be required by law. The municipal clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.

D. Mayor and Administration

Section 39. Executive Power. The executive power of the municipality shall be exercised by the mayor.

Section 40. Duties of Mayor. The mayor shall enforce the charter and ordinances of the municipality and all general laws applicable thereto. He shall annually report to the council and the public on the work of the previous year and on the condition and requirements of the municipal government and shall from time to time make such recommendations for action by the council as he may deem in the public interest. He shall supervise all departments of the municipal government and shall require each department to make an annual and such other reports of its work as he may deem desirable.

Section 41. Approval or Veto of Ordinances by Mayor; Attending Meetings. (a) Ordinances adopted by the council shall be submitted to the mayor, and he shall within [ten] days after receiving any ordinance, either approve the ordinance by affixing his signature thereto or return it to the council by delivering it to the municipal clerk together with a statement setting forth his objections thereto or to any item or part thereof. No ordinances or any item or part thereof shall take effect without the mayor's approval, unless the mayor fails to return an ordinance to the council within [ten] days after it has been presented to him, or unless council upon reconsideration thereof on or after the [third] day following its return by the mayor shall by a vote of two-thirds of the members resolve to override the mayor's veto.

(b) The mayor may attend meetings of the council and may take part in discussions of the council but shall have no vote.

Section 42. Acting Mayor. The mayor shall designate [the chief administrative officer,] any department head, or the municipal clerk as acting mayor. The acting mayor shall serve as mayor when the mayor shall be prevented by absence from the municipality, disability, or other cause from attending to the duties of his office. During such time, the person so designated by the mayor shall possess all the powers and duties of mayor.

Section 43. Departments. (a) The municipality shall have a department of administration and such other departments, not exceeding [nine] in number, as council may establish by ordinance. All of the administrative functions, powers, and duties of the municipality, other than those vested in the office of municipal clerk, shall be allocated and assigned among and within such departments.

(b) Each department shall be headed by a director, who shall be appointed by the mayor with the advice and consent of the council, [except that the mayor may appoint a chief administrative officer, who shall serve at his pleasure and who may head a department of administration]. Each department head shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor.

(c) The mayor may in his discretion remove any department head.

(d) Department heads shall appoint subordinate officers and employees within their respective departments and may, with approval of the mayor, remove such officers and employees subject to the provisions of the [cite appropriate civil service provision] but the council may provide by ordinance for the appointment and removal by the mayor of members of specific boards or commissions.

Section 44. Deputy Director of Department. (a) The director of each department in any city more than [ ] population may appoint a deputy director of his department who shall serve, and be removable at the pleasure of the director, in the unclassified service of the civil service of the city and shall receive such salary as shall be fixed by the director with the approval of the council.

(b) The director shall prescribe, in writing, the powers and duties of the deputy so appointed by him and the acts of such deputy, within the scope of his authority, shall in all cases be as legal and binding as if done and performed by the director for whom he is acting.

E. Budget and Control

Section 45. Preparation of Budget. The municipal budget shall be prepared by the mayor [with the assistance of the chief administrative officer]. During the month of [November], the mayor shall require all department heads to submit requests for appropriations for the ensuing budget year, and to appear before the mayor [or the chief administrative officer] at public hearings, which shall be held during that month, on the various requests.

Section 46. Submission of Recommended Budget. On or before the [fifteenth] day of [January] of each year, the mayor shall submit to council for approval his recommended budget together with such explanatory comment or statement as he may deem desirable. The budget shall be in such form as is required by law for municipal budgets. The council may reduce any item or items in the mayor's budget by a vote of a majority of the council, but the addition of or an increase in any item or items therein shall become effective only upon an affirmative vote of two-thirds of the members of the council.

Section 47. System of Work Programs and Quarterly Allotments. The council shall where practically provide for the maintenance of a system of work programs and quarterly allotments, for operation of the budget. It shall be the duty of the office or department administering any such program to develop and report appropriate unit costs of budgeted expenditures.

Section 48. Post-Audit. The council shall provide by ordinance, not subject to mayoral veto, for post-auditing the financial transactions of the municipality.

ARTICLE 4. COUNCIL-MANAGER PLAN

A. Form of Government; Election of Councilmen

Section 49. Applicable Laws. The form of government provided in this article shall be known as the "council-manager plan" and shall, together with articles 2 and 5, govern any municipality, the voters of which have adopted this plan pursuant to this act.

Section 50. Government by Elected Council and Appointed Manager; Other Officers and Employees. The government of each municipality under this article shall consist of an elected council, an appointed municipal manager, and such other officers and employees as may be duly appointed pursuant to this article, general law or ordinance.

Section 51. Election of Council, Members and Term. Note: See section 33 above for text.

Section 52. Vacancies in Council. Note: See section 34 above for text.

B. Council

Section 53. Organization of Council; Mayor.[1] On the [first] day of [July] following their election, the members-elect of the municipal council shall assemble at the usual place of meeting of the governing body of the municipality and organize and elect one of their number as mayor to serve for a term of [ ] years. The mayor shall be chosen by ballot by majority vote of all members of the municipal council. If the members shall be unable, within five ballots to be taken within two days of said organization meeting, to elect a mayor, then the member who in the election for members of the council received the greatest number of votes shall be the mayor. Should such person decline to accept the office, then the person receiving the next highest vote shall be the mayor, and so on, until the office is filled.

Section 54. Duties of Mayor. The mayor shall preside at all meetings of the council and shall have a voice and vote in its proceedings. All bonds, notes, contracts, and written obligations of the municipality shall be executed on its behalf by the mayor or, in the event of his inability to act, by such councilman as the municipal council shall designate to act as mayor during his absence or disability. The powers and duties of the mayor shall be only such as are expressly conferred upon him by this article.

Section 55. Powers of Municipality Vested in Council; Exceptions. All powers of the municipality and the determination of all matters of policy shall be vested in the council, except as otherwise provided by this act or by general law.

Section 56. Appointment of Municipal Manager and Clerk. The council shall appoint a municipal manager and a municipal clerk. Both of such offices may be held by the same person. The council may provide for the manner of appointment of [a municipal attorney, any planning board, zoning board of adjustment or personnel board in the municipality], and may create commissions and other bodies with advisory powers.

Section 57. Departments, Boards and Offices; Deputy Manager. The council shall continue or create, and determine and define the powers and duties of such executive and administrative departments, boards and offices, in addition to those provided for herein, as it may deem necessary for the proper and efficient conduct of the affairs of the municipality, including the office of deputy manager which shall not be included in the classified service under [cite appropriate service provision]. Any department, board or office so continued or created may at any time be abolished by the municipal council.

Section 58. Council to Act as a Body, Administrative Service to be Performed Through

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[1] States wishing to provide for an elective mayor, with duties similar to those of the mayor herein provided for, are referred to alternative section 2.03 of the National Municipal League's *Model City Charter*, p. 6.

Manager, Committees. It is the intention of this article that the municipal council shall act in all matters as a body, and it is contrary to the spirit of this article for any of its members to seek individually to influence the official acts of the municipal manager, or any other officer, or for the council or any of its members to direct or request the appointment of any person to, or his removal from, office; or to interfere in any way with the performance by such officers of their duties. The council and its members shall deal with the administrative service solely through the manager and shall not give orders to any subordinates of the manager, either publicly or privately. Nothing herein contained shall prevent the municipal council from appointing committees or commissions or its own members or of citizens to conduct investigations into the conduct of any officer or department, or any matter relating to the welfare of the municipality, and delegating to such committees or commissions such powers of inquiry as the municipal council may deem necessary.

Section 59. Qualifications of Municipal Managers. The municipal manager shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of the duties of his office as hereinafter set forth. At the time of his appointment, he need not be a resident of the municipality or state, but during his tenure of office he may reside outside the municipality only with the approval of council.

Section 60. Term of Municipal Manager, Removal, Suspension. The municipal manager shall hold office for an indefinite term and may be removed by a majority vote of the members of the council.[1]

Section 61. Absence or Disability of Manager. The manager may designate a qualified administrative officer of the municipality to perform his duties during his temporary absence or disability. In the event of his failure to make such designation, the council may by resolution appoint an officer of the municipality to perform the duties of the manager during such absence or disability and until he shall return or his disability shall cease.

Section 62. Powers and Duties of Manager. The municipal manager shall:

(1) be the chief executive and administrative official of the municipality;

(2) execute all laws and ordinances of the municipality;

(3) appoint and remove a deputy manager if one be authorized by the council, all department heads and all other officers, subordinates, and assistants for whose selection or removal no other method is provided in this article, except that he may authorize the head of a department to appoint and remove subordinates in such department, supervise and control his appointees, and report all appointments or removals at the next meeting thereafter of the municipal council;

(4) negotiate contracts for the municipality subject to the approval of the municipal council,

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[1] The National Municipal League's *Model City Charter* in its removal provisions (section 3.02) provides for a hearing if requested by the manager.

make recommendations concerning the nature and location of municipal improvements, and execute municipal improvements as determined by the municipal council;

(5) see that all terms and conditions imposed in favor of the municipality or its inhabitants in statute, public utility franchise or other contract are faithfully kept and performed, and upon knowledge of any violation call the same to the attention of the municipal council;

(6) attend all meetings of the municipal council with the right to take part in the discussions, but without the right to vote;

(7) recommend to the municipal council for adoption such measures as he may deem necessary or expedient, keep the council advised of the financial condition of the municipality, make reports to the council as required by it, and at least once a year make an annual report of his work for the information of the council and the public;

(8) investigate at any time the affairs of any officer or department of the municipality;

(9) perform such other duties as may be required of the municipal manager by ordinance or resolution of the municipal council.

The municipal manager shall be responsible to the council for carrying out all policies established by it and for the proper administration of all affairs of the municipality within the jurisdiction of the council.

Section 63. Preparation of Budget by Manager. The municipal budget shall be prepared by the municipal manager. During the month of [November] in each year, the municipal manager shall require all department heads to submit requests for appropriations for the ensuing budget year, and to appear before him at public hearings, which shall be held during that month, on the various requests.

Section 64. Submission of Recommended Budget by Manager; Work Programs and Quarterly Allotments. On or before the [fifteenth] day of [January] the municipal manager shall submit to the council his recommended budget together with such explanatory comment or statement as he may deem desirable. The budget shall be in such form as is required by law for municipal budgets.

The council shall, where practicable, provide by ordinance for the operation of a system of work programs and quarterly allotments for operation of the budget, and for development and reporting of appropriate unit costs of budgeted expenditures.

Section 65. Construction of Laws Conferring Power Upon Mayor. Any provision of general law conferring the appointing power or other power upon the mayor or other executive head of the municipality shall be construed as meaning the municipal manager in a municipality governed under this article, and the appointments or the power exercised by the municipal manager in accordance with such provision shall be given the same force and effect as if executed by the official named therein [except that members of the board of [ ][1] whenever required to be appointed by any such provision by any board or official of the municipality, shall be appointed under this article by [the mayor] [the city council]].

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[1] Insert the names of policymaking boards such as the board of education or the library board if provided by general law.

Section 66. Post-Audit. The council shall provide by ordinance for post-auditing the financial transactions of the municipality.

ARTICLE 5. ADDITIONAL PROVISIONS COMMON TO OPTIONAL PLANS[1]

A. Election Districts[2]

Section 67. Division of Municipalities Into Election Districts. Whenever a municipality adopts articles 3 or 4 with a provision for election of council members from election districts, said municipality shall be divided into districts by the municipal governing body as hereinafter provided.

Section 68. Division Into Election Districts. Within five days following the election at which the voters of the municipality shall have adopted one of said optional plans, the municipal governing body shall meet and shall, within thirty days of the adoption of said optional plan, divide the municipality into such number of election districts as is specified in the adopted plan.

Section 69. Boundaries of Election Districts; Population Difference. The governing body shall fix and determine district boundaries so that each district is formed of compact and contiguous territory, and will comply with the legal requirements for equal representation. [The district so created shall not deviate in population, according to the most recent federal census, by more than [ten] per centum [10%] from the figure obtained by dividing the total population of the municipality by the number of council members to be elected from districts.]

Section 70. Adjustments in Election District Boundaries Following Census. Within three months following each decennial federal census, the governing body of the municipality shall meet, in the manner heretofore provided in this article for the purpose of making such adjustments in district boundaries as shall be necessary pursuant to section 69 of this article.

Section 71. Failure of Municipal Governing Body to Apportion or Reapportion. If a municipal governing body fails to apportion or reapportion election districts as required by sections 67 and 70, the [board of county commissioners] [appropriate county court] shall apportion or reapportion the governing body of the municipality in accordance with sections 68 and 69.

Section 72. Officers of Existing Election Districts. All officers elected for existing districts in any municipality wherein district lines are changed pursuant to section 70 of this article, shall continue in office until their respective terms of office shall expire and until their successors are elected and qualified.

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[1] These provisions are concerned only with transitional matters from one form of local government to another adopted under the optional plan provisions. It is assumed that general laws will cover election procedures, official conduct, recall, referendum, initiative, personnel, planning, etc.

[2] States wishing to provide for division into wards by the city council existing before the change may refer to the provision in section 705.73 of the Ohio Optional Charter Law, *Ohio Revised Code, Annotated,* 1954.

B. Succession in Government

Section 73. Schedule of Installation of Optional Plan Adopted. The schedule of installation of an optional plan adopted pursuant to this act shall, as provided herein, take the following course:

(1) an election to submit the question of adoption of an optional plan may be held at any time in accordance with the provisions of article 1 of this act;

(2) in the event of a favorable vote of the voters at the above election, the first election of officers under the adopted plan shall take place on (1) the [second Tuesday in May] occuring not less than [seventy-five] days next following the adoption of one of the optional plans in municipalities adopting a charter providing for election at a regular municipal election; or (2) at the next general election occurring no less than [seventy-five] days next following the adoption of one of the optional or alternative plans in municipalities adopting a charter providing for election at a general election.

Whenever a municipality has adopted a charter providing for partisan election, prior to the last day fixed for the filing of nominating petitions for the primary election, the candidates to be first elected shall be nominated in the manner provided by [cite appropriate election law or code provisions] with respect to the filling of certain vacancies in nominations for county or municipal offices to be filled at the general election;

(3) an optional plan shall take effect, in accordance with the further provisions of this article at (1) twelve o'clock noon on the [first] day of [July] next following the first election of officers in municipalities adopting a charter providing for elections at a municipal election, or (2) twelve o'clock noon on the first day of January next following the first election of officers in municipalities adopting a charter providing for elections at a general election.

Section 74. Charters Superseded; Existing Ordinances Remaining in Force. Upon the effective date of an optional charter adopted pursuant to this act, any other charter and its amendments and supplements theretofore applicable to the municipality shall be superseded with respect to such municipality. All ordinances and resolutions of the municipality to the extent that they are not inconsistent with the provisions of this act, shall remain in full force and effect until modified or repealed as provided by law.

Section 75. Existing Officers and Employees.

NOTE: Use this section for transitional provisions applicable to present officers and employees. They should deal with matters such as continuation in employment and grade, protection of tenure, seniority rights, pensions, etc., and must be tailored to existing provisions of state law. Sample provisions are available in the National Municipal League's *Model City Charter*, article X, Transitional Provisions, pp. 69-72.

Section 76. Appointments Between Election and Time of Taking Office; Pending Actions. (a) No subordinate board, department, body, office, position or employment shall be created and no appointments shall be made to any subordinate board, department or body, or to any office, employment or position, including without limitation patrolmen and firemen, between the date of election of officers and the date the newly elected officers take office under any optional plan.

(b) All actions and proceedings of a legislative, executive, or judicial character which are pending upon the effective date of an optional plan adopted pursuant to this act may continue, and the appropriate officer or employee under such optional plan shall be substituted for the officer or employee theretofore exercising or discharging the function, power or duty involved in such action or proceeding.

Section 77. Separability. [Insert separability clause.]

Section 78. Effective Date. [Insert effective date.]

31-63-00

METROPOLITAN FUNCTIONAL AUTHORITIES

A notable phenomenon of the past decade has been the proliferation of local public "authorities" or "special districts," generally created to provide a single type of governmental service or facility, e.g., housing, some phase of natural resources activity, sewage disposal, parks, hospital service, water supply, or other utility services. In 1962 there were 18,323 special district governments, half again as many as there were in 1952.[1] Much of the increase occurred in metropolitan areas; between 1957 and 1962, the number of special districts in the 212 areas officially recognized as SMSA's in 1962 rose from 3,736 to 5,411.[2] While most special districts are located outside city borders, a sizeable number (probably over 500) serve or are included in the metropolitan area central cities.

The spread of functional authorities has caused concern among public administrators, scholars, and political leaders in metropolitan areas. The authority approach has been denounced as "super-government," arrogant and irresponsible. The severity with which particular authorities are condemned is frequently correlated directly with their size, success, and power. Three principal arguments are advanced against the use of functional authorities: (1) It is a piecemeal approach to metropolitan problems. The practice of pulling out single functions for independent handling could, if carried to its logical conclusion, lead to a whole "nest" of powerful authorities, each operating with respect to a particular function and each unrelated in planning, programming and financial management to all of the others. (2) The creation of authorities adds to the number of local units of government within the metropolitan area, where there are already too many. (3) Authorities, being typically governed by a board of directors of private citizens appointed for staggered terms, are not directly responsive to the will of the people and to a considerable extent are beyond the reach of any one level of government.

The problems and limitations of the authority device, as it has been widely used, cannot be taken lightly. They need to be recognized and avoided in any legislation designed to permit metropolitan areas to utilize this device where it seems more desirable or feasible than alternative changes in the existing pattern of local government. Accordingly, the draft legislation which follows, providing for the permissive establishment of metropolitan service corporations, contains safeguards against the three arguments most often cited against authorities. The metropolitan service corporation proposed could be of a multi-functional type that would meet the argument that the authority inevitably leads to a piecemeal and fragmented approach. In the form proposed it would be susceptible, if the area residents so chose, of handling numerous areawide services and functions. Secondly, by providing for a board of directors made up of members ex officio from boards of county commissioners, city councils, and mayors, the affairs of the corporation would be kept in the hands of elected officials and not entrusted to an independent, "untouchable" body. Poor performance of the corporation would carry the possibility of retribution at the polls for its board of directors. Third, the corporation could at the most result in the addition of a single unit of government in any given metropolitan area, while holding the potentiality of absorbing the functions and responsibilities of a considerable number of separate organizational units within the existing units of local government in the area.[3]

In summary: (1) the draft bill would authorize the establishment of a "metropolitan service corporation" on the basis of a majority vote in the area to be served by the corporation, pursuant to an election resulting either from resolution of the governing bodies of major local governments or from petition. (2) The corporation would be empowered by statute, subject to local voter approval, to carry on one or more of several metropolitan functions, such as sewage disposal, water supply, transportation, or planning. If the function of comprehensive planning were voted to the corporation, performance on a metropolitan area basis would be required, in contrast to permission for a smaller "service area" in the case of other functions. (3) The corporation would be governed by a metropolitan council consisting of representatives from the boards of county commissioners, and from the mayors and councils of component cities. (4) The corporation would have power to impose service charges and special-benefit assessments, to impose sales, income, and property taxes, and to issue bonds. The use of sales, income, or property taxes would be appropriate where a corporation has responsibility for functions that cannot be financed solely through special assessments. The larger area encompassed by a metropolitan service corporation would overcome some of the objectionable features of administering "local" nonproperty taxes. By authorizing metropolitanwide sales or income taxes, states can to some extent reduce the fiscal disparities between contiguous local units. Where possible such taxes should be "piggybacked" on state taxes to simplify administration.

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[1] Part of the increase, however, resulted from a reclassification by the Bureau of the Census of certain public authorities from dependent agencies to independent special districts.

[2] See footnote 1.

[3] This legislation would not, obviously, provide for all the problems involved where an authority is needed to serve metropolitan territory in two or more states. However, some of the principles expressed in this proposed statute might well be extended to any legislation providing explicitly for such agencies.

The text of the suggested legislation is based on the provisions of Chapter 213, Laws of 1957, State of Washington.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing for the creation and operation of metropolitan service corporations to provide and coordinate certain specified public services and functions for particular areas."]

(Be it enacted, etc.)

Title I

Purpose of Act, and Definitions

Section 1. It is hereby declared to be the public policy of this state to provide for the people of the populous metropolitan areas in the state the means of obtaining essential services not adequately provided by existing agencies of local government. The growth of urban population and the movement of people into suburban areas has created problems of sewage and garbage disposal, water supply, public transportation, planning, parks and parkways which extend beyond the boundaries of cities, counties and special districts. For reasons of topography, location and movement of population, and land conditions and development, one or more of these problems cannot be adequately met by the individual cities, counties and districts of metropolitan areas. It is the purpose of this act to enable cities and counties to act jointly to meet these common problems in order that the proper growth and development of the metropolitan areas of the state may be assured and the health and welfare of the people residing therein may be secured.

Section 2. As used herein:

(1) "Metropolitan service corporation" means a municipal service corporation of the state of [ ] created pursuant to this act.

(2) "Metropolitan area" as used herein is an area designated as a "standard metropolitan statistical area" by the U.S. Bureau of the Census in the most recent nationwide Census of the Population.[1]

(3) "Service area" means the area contained within the boundaries of an existing or proposed metropolitan service corporation.

(4) "City" means an incorporated city or town.

(5) "Component city" means an incorporated city or town within a service area.

(6) "Component county" means a county of which all or part is included within a service area.

(7) "Central city" means the city with the largest population in a service area.

(8) "Central county" means the county containing the city with the largest population in a service area.

(9) "Special district" means any municipal corporation of the state of [ ] other than a city, town, county, school district, or metropolitan service corporation.

(10) "Metropolitan council" means the legislative body of a metropolitan service corporation.

(11) "City council" means the legislative body of any city or town.

(12) "Population" means the number of residents as shown by the figures released from the most recent official federal Census of Population.

(13) "Metropolitan function" means any of the functions of government named in title I, section 2 of this act.

(14) "Authorized metropolitan function" means a metropolitan function which a metropolitan service corporation shall have been authorized to perform in the manner provided in this act.

Title II

Area and Functions of a Metropolitan Service Corporation

Section 1. A metropolitan service corporation may be organized to perform certain metropolitan functions, as provided in this act, for a service area consisting of contiguous territory which comprises all or part of a metropolitan area and includes the entire area or two or more cities, of which at least one has a population of [50,000] or more; but if a metropolitan service corporation shall be authorized to perform the function of metropolitan comprehensive planning it shall exercise such power, to the extent found feasible and appropriate, for the entire metropolitan area rather than only for some smaller service area. No metropolitan service corporation shall have a service area which

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[1] Particular states may find it appropriate and desirable to apply a somewhat different definition from this, tailored to their particular circumstances. For example, a 1961 enactment in Colorado (H.B. 221) defines a metropolitan area as "a contiguous area consisting of one or more counties in their entirety, each of which has a population density of at least fifteen persons per square mile."

includes only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of a service area. No territory shall be included within the service area of more than one metropolitan service corporation.

Section 2. **A metropolitan service corporation shall have the power to perform any one or more of the following functions, when authorized in the manner provided in this act:**

(a) Metropolitan comprehensive planning.
(b) Metropolitan sewage disposal.
(c) Metropolitan water supply.
(d) Metropolitan public transportation.
(e) Metropolitan garbage disposal.
(f) Metropolitan parks and parkways.
(g) [ ]
(h) [ ]

Section 3. **With respect to each function it is authorized to perform, a metropolitan service corporation shall make services available throughout its service area on a uniform basis, or subject only to classifications or distinctions which are applied uniformly throughout the service area and which are reasonably related to such relevant factors as population density, topography, types of users, and volume of services used. As among various parts of the service area, no differentiation shall be made in the nature of services provided, or in the conditions of their availability, which is determined by the fact that particular territory is located within our outside of a component city.**

Section 4. **In the event that a component city shall annex territory which, prior to such annexation is outside the service area of a metropolitan service corporation, such territory shall by such annexation become a part of the service area.**

Title III

Establishment and Modification of a Metropolitan Service Corporation

Section 1. **A metropolitan service corporation may be created by vote of the qualified electors residing in a metropolitan area in the manner provided in this act. An election to authorize the creation of a metropolitan service corporation may be called pursuant to either a resolution or a petition, as follows:**

(a) A resolution or concurring resolutions calling for such an election may be adopted by either:
(1) the city council of a central city; or
(2) the city councils of two or more component cities other than a central city; or

(3) the board of commissioners of a central county. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the [board of commissioners] of the central county.

(b) A petition calling for such an election shall be signed by at least [4] percent of the qualified voters residing within the metropolitan area and shall be filed with the [appropriate official] of the central county.

Any resolution or petition calling for such an election shall describe the boundaries of the proposed service area, name the metropolitan function or functions which the metropolitan service corporation shall be authorized to perform in the service area. After the filing of a first sufficient petition or resolution with such county [official] or board of county commissioners respectively, action by such [official] or board shall be deferred on any subsequent petition or resolution until after the election has been held pursuant to such first petition or resolution.

Upon receipt of such a petition, the [official] shall examine the same and certify to the sufficiency of the signatures thereon. Within thirty days following the receipt of such petition, the [official] shall transmit the same, together with his certificate as to the sufficiency thereof, to the legislative body of each county and city within the metropolitan area.

Section 2. The election on the formation of the metropolitan service corporation shall be conducted by the [appropriate official] of the central county in accordance with the general election laws of the state and the results thereof shall be canvassed by the county canvassing board of the central county, which shall certify the result of the election to the board of county commissioners of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state.[1] Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election and has resided within the service area for at least [thirty] days preceding the date of the election. The ballot proposition shall be substantially in the following form:

FORMATION OF METROPOLITAN SERVICE CORPORATION

Shall a metropolitan service corporation be established for the area described in a resolution of the board of commissioners of [ ] county adopted on the [ ] day of [ ] 19[ ] to perform the metropolitan functions of [here insert the title of each of the functions to be authorized as set forth in the petition or initial resolution]?

YES . . . . [ ]
NO . . . . [ ]

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[1] In a state where this procedure might face constitutional difficulties, provision would be made, instead, for individual county canvassing, and certification to the central county or the secretary of state.

If a majority of the persons voting on the proposition residing within the service area shall vote in favor thereof, the metropolitan service corporation shall thereupon be established and the board of commissioners of the central county shall adopt a resolution setting a time and place for the first meeting of the metropolitan council which shall be held not later than thirty days after the date of such election. A copy of such resolution shall be transmitted to the legislative body of each component city and county and of each special district which shall be affected by the particular metropolitan functions authorized.

Section 3. A metropolitan service corporation may be authorized to perform one or more metropolitan functions in addition to those which it has previously been authorized to perform, with the approval of the voters at an election, conducted in the manner provided by title III, sections 1 and 2 of this act concerning an election on the original formation of a metropolitan service corporation.

If a majority of the persons voting on the proposition shall vote in favor thereof the metropolitan service corporation shall be authorized to perform such additional metropolitan function or functions.

Section 4. The service area of a metropolitan service corporation may be extended, subject to the general geographical conditions stated in title II, section 1, in the manner provided in this section.

(a) The metropolitan council of a metropolitan service corporation may make or authorize studies to ascertain the desirability and feasibility of extending the service area of the corporation to include particular additional territory within the metropolitan area which is contiguous to the existing service area of the corporation. If such studies appear to justify, the metropolitan council may adopt a resolution stating that it has formally under consideration the annexation of certain territory to the service area. The resolution shall clearly describe the area or areas concerned, and shall specify the time and place of a public hearing to be held on the matter by the metropolitan council. Such resolution shall be published in one or more newspapers having general circulation in the metropolitan area, at least [thirty] days before the date set for the public hearing.

(b) The metropolitan council shall hold the public hearing so announced, to receive testimony on the question of extending the boundaries of the service area, and it may hold further public hearings on the matter, subject in each instance to published notice in a newspaper having general circulation in the area, at least [three] days in advance.

(c) Following such hearings, the metropolitan council may, by resolution, authorize the annexation to the service area of all or any portion of the territory which was considered for annexation in accordance with the foregoing paragraphs of this section. Such resolution shall clearly describe the area or areas to be annexed and shall specify the effective date of the annexation, which shall in no event be sooner than either: (1) [six] months from the date when such resolution is published; or (2) [one] month after the date of the next regular primary or general election to be held throughout the metropolitan area. The resolution shall be published in one or more newspapers having general circulation in the metropolitan area.

(d) Any annexation to the service area of a metropolitan service corporation which is authorized in the manner provided above shall become effective on the date specified unless nullified pursuant to a popular referendum conducted as follows:

To be sufficient, a petition calling for a popular referendum on the prospective annexation of particular territory to the service area of a metropolitan service corporation shall be signed by at least either: (1) [4] percent of the qualified voters residing within the entire service area of the corporation as prospectively enlarged; or (2) [20] percent of the qualified voters residing within the territory concerning which a referendum is proposed. The petition shall indicate such territory, in terms of any one or more entire areas specified for annexation by the metropolitan council resolution which is described in paragraph (c) above. Such petition shall be filed with the [appropriate official] of the central county within [thirty] days of the publication of the annexation resolution by the metropolitan council. The [official] shall examine the same and certify to the sufficiency of the signatures thereon. If a sufficient petition is filed, the question specified by such petition shall be submitted at the next regular primary for general election held throughout the metropolitan area. If, at such election, a majority of the vote cast on the question within the service area of the metropolitan service corporation as prospectively enlarged shall vote against the annexation of a particular area or areas, the action of the metropolitan council with respect to such area or areas shall thereby be nullified.[1]

Title IV

Organization and Governing Body of a Metropolitan Service Corporation

Section 1. A metropolitan service corporation shall be governed by a metropolitan council composed of the following:[2]

(1) one member selected by, and from, the board of commissioners of each component county;

(2) one member who shall be the mayor of the central city;

(3) one member from each of the three largest component cities other than the central city, selected by, and from, the mayor and city council of each of such cities;

(4) [ ] members representing all component cities other than the four largest cities to be selected from the mayors and city councils of such smaller cities by the mayors of such cities in the

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[1] An alternative type of referendum requirement may be found desirable by some states.

[2] Numbers of members coming from cities as contrasted to counties, as well as the total size of the metropolitan council should, of course, be adjusted in terms of the general pattern of local government prevalent within the metropolitan areas of the particular state.

following manner: the mayors of all such cities shall meet on the second Tuesday following the establishment of a metropolitan service corporation and thereafter on [date] of each even-numbered year at [ ] o'clock at the office of the board of county commissioners of the central county. The chairman of such board shall preside. After nominations are made, ballots shall be taken and the [ ] candidate[s] receiving the highest number of votes cast shall be considered selected;

(5) one member, who shall be chairman of the metropolitan council, selected by the other members of the council. He shall not hold any additional public office other than that of notary public or member of the military forces of the United States or of this state, not on active duty.

Section 2. At the first meeting of the metropolitan council following the formation of a metropolitan service corporation, the mayor of the central city shall serve as temporary chairman. As its first official act the council shall elect a chairman. The chairman shall be a voting member of the council and shall preside at all meetings. In the event of his absence or inability to act the council shall select one of its members to act as chairman pro tempore. A majority of all members of the council shall constitute a quorum for the transaction of business. A smaller number of council members than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the council may provide. The council shall determine its own rules and order of business, shall provide by resolution for the manner and time of holding all regular and special meetings and shall keep a journal of its proceedings which shall be a public record. Every legislative act of the council of a general or permanent nature shall be by resolution.

Section 3. The chairman shall hold office until [date] of each even-numbered year and may, if re-elected, serve more than one term. Each member of a metropolitan council selected under the provisions of section 1, paragraphs (1) and (3) of this title shall hold office at the pleasure of the body which selected him. No member other than the chairman may hold office after he ceases to hold the position of mayor, commissioner, or councilman.

Section 4. A vacancy in the office of a member of the metropolitan council shall be filled in the same manner as provided for the original selection. The meeting of mayors to fill a vacancy of the member selected under the provisions of section 1, paragraph (4) of this title shall be held at such time and place as shall be designated by the chairman of the metropolitan council after ten days' written notice mailed to the mayors of each of the cities specified in section 1, paragraph (4) of this title.

Section 5. The chairman of the metropolitan council shall receive such compensation as the other members of the metropolitan council shall provide. Members of the council other than the chairman shall receive compensation for attendance at metropolitan council or committee meetings of [ ] dollars per diem but not exceeding a total of [ ] dollars in any one month, in addition to any compensation which they may receive as officers of component cities or counties; but officers serving in such capacities on a full time basis shall not receive compensation for attendance at metropolitan council or committee meetings. Members of the council may be reimbursed for expenses actually incurred by them in the conduct of official business for the metropolitan service corporation.

Section 6. The name of a metropolitan service corporation shall be established by its metropolitan council. Each metropolitan service corporation shall adopt a corporate seal containing the name of the corporation and the date of its formation.

Section 7. All the powers and functions of a metropolitan service corporation shall be vested in the metropolitan council unless expressly vested in specific officers, boards, or commissions by this act. Without limitation of the foregoing authority, or of other powers given it by this act, the metropolitan council shall have the following powers:

(a) To establish offices, departments, boards and commissions in addition to those provided by this act which are necessary to carry out the purposes of the metropolitan services corporation, and to prescribe the functions, powers and duties thereof.

(b) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the metropolitan service corporation except those whose appointment or removal is otherwise provided for by this act [subject to the civil service provisions of [cite appropriate civil service statute provisions].

(c) To fix the salaries, wages and other compensation of all officers and employees of the metropolitan service corporation except those otherwise fixed in this act [subject to the civil service provisions of [cite appropriate civil service statute provisions].

(d) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the metropolitan service corporation.

Title V

Duties of a Metropolitan Service Corporation

Section 1. As expeditiously as possible after its establishment or its authorization to undertake additional metropolitan functions, the metropolitan service corporation shall develop plans with regard to the extent and nature of the services it will initially undertake with regard to each authorized metropolitan function, and the effective dates when it will begin to perform particular functions. Such initial basic plans shall be adopted by resolution of the metropolitan council.

Section 2. The metropolitan service corporation shall plan for such adjustment or extension of its initial ssumption of responsibilities for particular authorized functions as is found desirable, and the metropolitan council may authorize such changes by resolution.

Section 3. It shall be the duty of a metropolitan service corporation to prepare comprehensive plans for the service area with regard to present and future public facility requirements for each of the metropolitan functions it is authorized to perform.

Section 4. If a metropolitan service corporation shall be authorized to perform the functions of metropolitan comprehensive planning, it shall have the following duties, in addition to the other duties and powers granted by this act:

(1) To prepare a recommended comprehensive land use plan and public capital facilities plan for the metropolitan area as a whole.

(2) To review proposed zoning ordinances and resolutions or comprehensive plans of component cities and counties and make recommendations thereon. Such proposed zoning ordinances and resolutions or comprehensive plans must be submitted to the metropolitan council prior to adoption and may not be adopted until reviewed and returned by the metropolitan council. The metropolitan council shall cause such ordinances, resolutions and plans to be reviewed by the planning staff of the metropolitan service corporation and return such ordinances, resolutions and plans, together with their findings and recommendations thereon, within ninety days following their submission.

(3) To provide planning services for component cities and counties upon request and upon payment therefor by the cities or counties receiving such service.

Section 5. A metropolitan service corporation shall offer to employ every person who on the date such corporation acquires a metropolitan facility is employed in the operation of such facility by a component city or county or by a special district. Where a metropolitan service corporation employs a person employed immediately prior thereto by a component city or county, or by a special district, such employee shall be deemed to remain an employee of such city, county, or special district for the purposes of any pension plan of such city, county, or special district, and shall continue to be entitled to all rights and benefits thereunder as if he had remained as an employee of the city, county, or special district, until the metropolitan service corporation has provided a pension plan and such employee has elected, in writing, to participate therein. Until such election, the metropolitan service corporation shall deduct from the remuneration of such employee the amount which such employee is or may be required to pay in accordance with the provisions of the plan of such city, county, or special district and the metropolitan service corporation shall pay to the city, county, or special district any amounts required to be paid under the provisions of such plan by employer and employee.

Title VI

General Powers of a Metropolitan Service Corporation

Section 1. In addition to the powers specifically granted by this act a metropolitan service corporation shall have all powers which are necessary to carry out the purposes of the metropolitan service corporation and to perform authorized metropolitan functions.

Section 2. A metropolitan service corporation may sue and be sued in its corporate capacity in all courts and in all proceedings.

Section 3. A metropolitan service corporation shall have power to adopt, by resolution of its metropolitan council, such rules and regulations as shall be necessary or proper to enable it to carry out authorized metropolitan functions and may provide penalties for the violation thereof. Actions to impose or enforce such penalties may be brought in the [appropriate] court in the central county.

Section 4. A metropolitan service corporation shall have power to acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities requisite to its performance of authorized metropolitan functions, together with all lands, properties, equipment and accessories necessary for such facilities. Facilities which are owned by a city or special district may, with the consent of the legislative body of the city or special districts owning such facilities, be acquired or used by the metropolitan service corporation. Cities and special districts are hereby authorized to convey or lease such facilities to a metropolitan service corporation or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or special district and the metropolitan council, without submitting the matter to the voters of such city or district.

Section 5. A metropolitan service corporation shall have power to acquire by purchase and condemnation all lands and property rights, both within and without the metropolitan area, which are necessary for its purposes. Such right of eminent domain shall be exercised by the metropolitan council in the same manner and by the same procedure as is or may be provided by law for cities of the [ ] class, except insofar as such laws may be inconsistent with the provisions of this act.

Section 6. A metropolitan service corporation shall have power to construct or maintain metropolitan facilities in, along, on, under, over, or through public streets, bridges, viaducts, and other public rights-of-way without first obtaining a franchise from the county or city having jurisdiction over them; but such facilities shall be constructed and maintained in accordance with the ordinances and resolutions of the city or county relating to construction, installation and maintenance of similar facilities in such public properties.

Section 7. Except as otherwise provided herein, a metropolitan service corporation may sell or otherwise dispose of any real or personal property acquired in connection with any authorized metropolitan function and which is no longer required for the purposes of the metropolitan service corporation in the same manner as provided for cities of the [ ] class. When the metropolitan council determines that a metropolitan facility or any part thereof which has been acquired from a component city or county without compensation is no longer required for metropolitan purposes, but is required as a local facility by the city or county from which it was acquired, the metropolitan council shall by resolution transfer it to such city or county.

Section 8. A metropolitan service corporation may contract with the United States or any agency thereof, any state or agency thereof, any other metropolitan service corporation, any county, city, special district, or other governmental agency for the operation by such entity of any facility or the performance on its behalf of any service which the metropolitan service corporation is authorized to operate or perform, on such terms as may be agreed upon by the contracting parties.

Title VII

Financial Powers of a Metropolitan Service Corporation

Section 1. A metropolitan service corporation shall have power to set and collect charges for services it supplies and for the use of metropolitan facilities it provides.

Section 2. A metropolitan service corporation shall have the power to issue bonds for any authorized capital purpose of the metropolitan service corporations; but a proposition authorizing the issuance of such bonds shall have been submitted to the electors of the metropolitan service corporation at a special election and assented to by a majority of the persons voting on said proposition at said election.[1]

Section 3. The metropolitan service corporation shall have the power to levy special assessments payable over a period of not exceeding [ ] years on all property within the service area specially benefited by an improvement, on the basis of special benefits conferred, to pay in whole or in part the damages or costs of any such improvement.

Section 4. (a) A metropolitan service corporation may levy a property tax within its area on all taxable property after a referendum on the proposition authorizing the property tax has been conducted by the [election officials] of the county [component counties] in accordance with [the general election laws of the state] and a majority of the persons voting on the proposition assent to the imposition of the tax. The results thereof shall be canvassed by the [county canvassing board] of the central county, which shall certify the result of the election to the [insert name of governing body] of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state. Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless he has been a qualified voter under the laws of the state in effect at the time of such election for at least thirty days preceding the date of the election. The expenses of the referendum shall be prorated among all the counties according to each county's share of the total population of the area.

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[1] Additional provisions concerning borrowing power and procedures will commonly be found desirable, with their nature depending upon other laws and practices of the state. Such state consideration should carefully review the bonding power granted to the service corporation as it relates to general local debt limitations and general local bonding authority.

(b) The Metropolitan Service Corporation shall annually fix the amount of money necessary to be raised by taxation upon the taxable property in its area. Annually before [insert date] the assessor of each [insert name of collection unit performing assessment] shall transmit to the corporation a written statement showing the taxable value of all property within the jurisdiction of the [insert local unit performing assessment] which lies within the area. The value shall be ascertained from the [assessment records] for the year as equalized and corrected by the [state property tax review agency]. On [insert date] the corporation shall fix the tax rate [not to exceed [ ]], based upon the aggregate of equalized values transmitted by the assessor. On [insert date] the tax rate shall be certified to the governing bodies of the counties within the area and taxes shall be certified to the governing bodies of the counties within the area and taxes shall be levied and collected for the corporation in the same manner as taxes levied for other purposes].

Section 5. A metropolitan service corporation may impose within its area by reference to the state sales and use tax act, a sales and use tax at a rate not to exceed [%] of the state sales and use tax paid.

Section 6. A metropolitan corporation may impose within its area a tax on income, as defined by reference to the provisions of the state income tax act and at a rate not to exceed [%] of any taxpayer's liability under the state income tax act.

Section 7. The [state tax department shall administer a sales and use tax, or an income tax adopted under this act. The [state tax commissioner] may prescribe forms and reasonable rules and regulations, for the purpose of making returns and for the ascertainment, assessment and collection of a tax imposed under this act. The rules and regulations promulgated in accordance with the state income or sales tax act shall apply to the taxes adopted under this act, except when, in the judgment of [tax commissioner], such rules would be inconsistent or not feasible of proper administration. The [state tax department] shall keep full and accurate records of all money received and distributed under this act.

Section 8. All sums received or collected on behalf of a metropolitan service corporation from income and sales taxes levied pursuant to this act, shall be deposited to a special fund which is hereby established in the state treasury. The amount collected on behalf of a metropolitan service corporation shall be paid within ten [10] days after collection to the metropolitan service corporation after deducting the amount of refunds, and the amount necessary to defray the cost of collecting and administering the tax.

Section 9. A metropolitan service corporation shall have the power when authorized by a majority of all members of the metropolitan council to borrow money from any component city or county and such cities or counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the metropolitan council and the legislative bodies of such component city or county.

Section 10. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a metropolitan service corporation pursuant to this act. Such bonds and other obligations shall be authorized security for all public deposits in this state.

Section 11. A metropolitan service corporation shall have the power to invest its funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds.

Title VIII

Separability and Effective Date

Section 1. Separability. [Insert separability clause.]

Section 1. Effective Date. [Insert effective date.]

31-69-00

SUPERVISION OF SPECIAL DISTRICT ACTIVITIES

More than 18,000 "special districts" existed in the United States in 1962, according to the *Census of Governments.* These districts provide valuable governmental services to the people. In 1962 their total expenditures exceeded $3.1 billion and their current revenues, mostly from taxes and service and toll charges, exceeded $2.5 billion.

These financial data alone clearly indicate the impact of special districts upon local government in the United States. Despite this fact, the activities of special districts and the activities of state government and units of general local government are frequently not coordinated. In addition, adequate information concerning special district activities is often not available to the general public. Even where a special district is governed by elected officials, the turnout for district elections is extremely small and the availability of financial and other data relating to the district activities is often non-existent. This is true even in some states where statutes provide for a state agency to review, or at least be informed of, the financial operations of special districts. The recent report of the Advisory Commission on Intergovernmental Relations entitled *The Problem of Special Districts in American Government* noted, in a number of instances, the failure of both state supervisory agencies and special districts to comply with such requirements of state law.

The suggested act is designed, in a number of instances, to insure that special district activities are related to those of general local government, (i.e., counties, cities, and towns), as well as to insure the availability of appropriate information concerning the activities of districts available to the general public.

Section 3 requires the approval by either the municipality or the county, or both, of land acquisitions by special districts located in the county or municipality and, where the activity engaged in by the district affects a state function, by the appropriate state agency. If a local government or a state agency denies approval of the proposed land acquisition, the special district may seek judicial review of the decision.

Section 4 provides for an advisory review by a unit of general local government and, where appropriate, by state agencies of proposed capital improvements by a special district. Such review is merely advisory.

Section 5 requires that notification be given a state official and a county official of activities of existing and newly created special districts.

Section 6 directs a state agency, to the extent feasible, to establish uniform budget and account standards for all special districts and to audit or approve private audits of district accounts.

Section 7 provides a means whereby the taxpayer can be informed of all special district property taxes and assessments he pays at the same time that he is informed of county and municipal taxes and assessments.

Section 8 directs counties and municipalities in preparing annual reports to include pertinent information on the activities of special districts operating within their territory.

Finally, Section 9 provides for review and approval or modification, by a state agency, of service charges or tolls assessed by special districts where such services and tolls are not already approved or reviewed by a local government or a state or federal agency.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to coordinate special district activities with activities of other governments and to insure public availability of information relating to special district activities."]

(Be it enacted, etc.)

Section 1. Purpose and Policy. **It is the purpose of this act to establish certain minimum procedures to insure that the activities of special districts are properly coordinated with those of other governmental units within the state. Further, it is essential that special districts as well as other governmental units, take affirmative action to insure that the public is fully aware of the activities of all governmental entities operating within a particular community.**

Section 2. Definitions. **As used in this act:**

(1) "Special district" means [any agency, authority, or political subdivision of the state organized for the purpose of performing governmental or prescribed functions within limited boundaries. It includes all political subdivisions of state except a city, a county, a town, or a school [district].

(2) "Governing body" means the body possessing legislative authority in a city, county, or special district.

Section 3. Land acquisitions by Special Districts. **(a) Prior to acquisition of title to any land by a special district authorized by law to acquire land, the district shall submit to the city and/or county in which such land is located a statement indicating its intention to acquire the land. If the land is located within the territorial limits of two or more cities and/or counties, the statement shall be submitted to each of them.**

(b) The statement shall be in the form of a resolution adopted by the governing body of the district, indicating the intention of the district to acquire the land, and shall contain a brief but appropriate identification of the land to be acquired, an indication of the use to which it will be put, and other information the district deems appropriate.

(c) Within [30] days after receipt of the statement of intention to acquire land, the governing bodies of the city or county or cities or counties shall by resolution indicate their approval or disapproval of the proposed acquisition; a resolution disapproving the proposed acquisition shall state the reasons therefor.

(d) If the special district is performing a function which directly affects a program conducted by the state, upon receiving approval for the acquisition pursuant to subsection (b), it shall transmit a copy of its statement of intention and the approving resolution or resolutions to the [office of local affairs or the secretary of state] who shall immediately refer the material to the [state agency responsible

for the administration of the state program involved]. The state agency shall, [30] days from receipt of the material, either approve or disapprove the proposed acquisition. The agency shall approve the proposed acquisition of land unless it finds that the acquisition or proposed use would be inconsistent or in conflict with state policy or an approved state plan for providing governmental services. The state agency's action shall be communicated to the governing body of the district by an order signed by the [head of the state agency], and if the proposed acquisition is disapproved, the order shall state the reasons therefor.

(e) Upon receiving approvals required pursuant to this section, a special district may proceed with the acquisition of land as otherwise authorized by law.

(f) If any governing body of a city or county or a state agency refuses to give approval to the proposed acquisition of land, the special district may challenge the decision by bringing suit in the [county court of general jurisdiction] in which the land is located. The court shall review the material pertinent to the proposed land acquisition and reasons for disapproval of the acquisition and shall render a decision either sustaining or overruling the disapproval. Finding of the agency or local government shall be conclusive as to questions of fact. The court may affirm the decision or remand the matter for further consideration. The court may reverse a denial where it finds that the denial was arbitrary or capricious or characterized by abuse of discretion or clearly and unwarranted exercise of discretion.

Section 4. Capital Improvements by Special Districts. (a) Any proposal by a special district for the construction of capital improvements shall be submitted, for comment, to the governing bodies of cities and counties within which the proposed improvements would be made, and in the event that the district is performing a function that directly affects a program conducted by the state, to the [office of local affairs or secretary of state] for transmittal to the state agency responsible for the operation of the state program at least [60] days prior to final action of the governing body of the district adopting the proposed capital improvement.

(b) Cities, counties, and/or state agencies receiving proposals for special district capital improvements shall review such proposals and, within [60] days after receipt thereof, may submit their comments thereon to the governing body of the special district. Upon receipt of the comments of all jurisdictions or agencies notified pursuant to this section, or [60] days after the transmittal of the proposed improvement program to such jurisdictions and agencies, the governing body of the district may adopt the proposed capital improvements, with or without modification, as part of the district program as otherwise authorized by law.

Section 5. Reporting the Creation of Special Districts. (a) The governing body of any existing special district shall, within [30] days after the adoption of this act, notify the [office of local affairs or secretary of state] and the [clerk of the county governing body or bodies] in which it is authorized to operate of its existence. The notification shall include a citation to the statute pursuant to which it was created and a brief description of its activities and service area.

(b) The governing body of a newly created special district shall submit, at its first meeting, notification of its existence as directed in subsection (a), and within one year of such meeting, a brief description of its activities and service area.

Section 6. Uniform Special District Accounts. (a) The [appropriate state agency][1] shall establish minimum standards of uniformity for the budget and accounts of all special districts operating within this state.

(b) The [appropriate state agency] annually shall audit the accounts of all special districts operating within the state, [or may approve annual private audit of the accounts of special districts performed at the expense of the district]. The reports of [private auditors shall be transmitted to the [appropriate state agency] and the reports of private auditors and] audits made by the [appropriate state agency] shall be transmitted to the county or counties within which the special district is authorized to operate.

Section 7. Special District Property Taxes and Special Assessments. (a) Every special district authorized by law to levy a property tax or a special assessment shall annually inform each county and city within which it operates of the tax and/or special assessment rate levied by the district and the assessed valuation of property against which the tax is levied and the basis for the assessment rate.

(b) The counties and cities so notified shall provide an itemization of special district property taxes and assessments levied against the property when furnishing tax [bills or receipts] to property owners within their borders.

Section 8. City and County Annual Reports. The annual report of any county or city issuing a report shall include, in addition to any other information required by law, pertinent information on the activities of all special districts operating wholly or partially within the territory of the city or county.

Section 9. Review of Special District Service Charges. The [state public service commission] shall review and approve, disapprove, or modify proposed service charges or tolls assessed by special districts within the state authorized to levy such charges or tolls, but the review shall not extend service charges or tolls levied by special districts which are otherwise approved or reviewed by the governing body of a county or a city or a state or federal agency. If the [public service commission] finds that the proposed service charge or toll is unreasonable [or is excessive in relation to the value of the service provided or to be provided], it may disapprove or modify the proposed charge or toll. The [public service commission] is authorized to establish necessary rules and procedures to carry out its responsibilities under this section.

Section 10. Separability. [Insert separability clause.]

Section 11. Effective Date. [Insert effective date.]

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[1] If there is an agency of state government exercising supervisory responsibility over the fiscal affairs or activities of local government, this agency should be inserted. If no such agency exists, either an office of local affairs or the state audit agency should be inserted.

31-91-00

INTERLOCAL CONTRACTING AND JOINT ENTERPRISE

The relationship of local governmental units to the functions which they are expected to perform raises difficult questions. The burgeoning of governmental services and the changing demands of modern life have sometimes required functions to be administered within geographic units larger than, or at least not coincident with the boundaries of existing political subdivisions. To a limited extent, municipal consolidations and annexations have taken place in an attempt to meet altered demographic situations. But the problem of devising appropriate local government areas remains. Often it is only a single function, or a limited number of functions that should be performed on a different or consolidated basis. In these instances the abolition of existing units is too extreme a remedy. On the other hand, special districts can and have been formed for school, fire protection, public sanitation, etc. Such districts are of great utility and doubtless will continue to be important. However, the creation of such districts usually requires special action from state authorities and may result in the withdrawal of control over the function from the political subdivisions formerly responsible for it. In these circumstances, there may be a large number of situations in which joint or cooperative rendering of one or more services by existing political subdivisions is called for.

In recent years states have been authorizing their political subdivisions to enter into interlocal agreements or contracts. Arrangements under which smaller communities send their high school pupils to the schools in adjacent larger cities, purchase water from a metropolitan supply system, receive police and fire protection from neighboring communities, or establish joint drainage facilities are becoming relatively frequent. However, legislation authorizing such arrangements has, almost without exception, been particularistic; related, only to the peculiar requirements of a designated local activity. The suggested Interlocal Cooperation Act which follows authorizes joint or cooperative activities on a general basis. It leaves it up to the local governmental units to decide what function or functions might better be performed by them in concert. The act does not grant any new powers to localities; it merely permits the exercise of power already possessed by the subdivision in conjunction with one or more other local communities for a common end. By leaving this degree of initiative with the localities themselves, the act seeks to make it easier for them to enter upon cooperative undertakings.

Because local governments and subdivisions have responsibility for the administration of certain state functions, and because the state in turn bears certain responsibilities for its subdivisions, some degree of control over interlocal agreements is both necessary and desirable. The suggested act provides this control by specifying the basic contents of such agreements and by requiring review by the attorney general where an agreement includes as a party a state agency or a public agency of another state or of the United States. Provision is also made for approval of other state officials in certain cases.

It is believed that legislation of this type will be most useful if drawn so as to apply to any local function. However, it is recognized that some activities may present special problems and that states may wish to continue the practice of making special statutory provision for such types of interlocal cooperation. It would be quite possible for a state to enact this statute for use with reference to most types of interlocal cooperation and to make provision elsewhere in state law for types of interlocal functions requiring special handling.

Alternative language is offered in section 4(a) which would provide a broad or narrow use of the joint agreement power. Without the language in parentheses, the act permits two or more public agencies to exercise a power jointly or cooperatively as long as one of them possesses the power. For example, Community A which has the power to build and maintain a public water supply system and Community B which does not have such a power, could enter into an agreement for the joint or cooperative construction and maintenance of such a facility. Some states may wish to enact a statute of this breadth. However, others may wish to limit the statute to use in situations where all agreeing public agencies can exercise the power separately. Inclusion of the language provided in parentheses would accomplish this limitation if desired.

It should be noted that the suggested act is drafted for use between or among communities whether or not they are located within a single state. Patterns of settlement often make it advantageous for communities at or near state lines to enter into cooperative relationships with neighboring subdivisions on the other side of the state boundary. It is clear that such relationships are possible when cast in the form of interstate compacts. Accordingly, the suggested act specifically gives interlocal agreements across state boundaries the status of compacts. However, the usual interstate compact is an instrument to which states are party. Since the contemplated interlocal agreements should be the primary creation and responsibility of the local communities, the act makes them the real parties in interest for legal purposes and places the state more in the position of guarantor. Since this means that the obligation is enforceable against the state if necessary, the interlocal agreement will have all the necessary attributes of a compact. However, the state in turn is protected by the requirement of prior approval of the agreement by state authorities and by the provisions of section 5 preserving the state's right of recourse against a nonperforming locality.

There has been much confusion concerning the need for congressional consent to interstate compacts. The wording of the Compact Clause of the Constitution has led some to believe that all compacts need congressional consent. However, this is clearly not the case. The leading case of Virginia *v.* Tennessee, 148 U.S. 503 (1893) makes it clear that only those compacts which affect the balance of the federal system or affect a power delegated to the national government require congressional consent. Such pronouncements as have come from state courts also take this position. Bode *v.* Barrett, 412 Ill. 204, 106 NE 2d 521 (1952); Dixie Wholesale Grocery Inc. *v.* Morton, 278 Ky. 705, 129 SW 2d 184 (1939), Cert. Den. 308 U.S. 609; Roberts Tobacco Co. *v.* Michigan Dept. of Revenue, 322 Mich. 519, 34 NW 2d 54 (1948); Russell *v.* American Ass'n. 139 Tenn. 124, 201 SW 151 (1918). Finally, it should be noted that the Southern Regional Education Compact to which a large number of states are party has been in full force and operation for over seven years even though it does not have the consent of congress and when challenged, the compact was upheld. McCready *v.* Byrd, 195 Md. 131, 73 A 2d 8 (1950). Except where very unusual circumstances exist, it seems clear that powers exercised by local governments either individually or in concert, lie squarely within state jurisdiction and so raise no question of the balance of our federal system. Accordingly, in the absence of special circumstances, it is clear that interlocal agreements between or among subdivisions in different states would not need the consent of Congress.

Some of the states have boundaries with Canada or Mexico. Therefore, it may be that some border localities in these states might have occasion to enter into interlocal agreements with communities in these neighboring foreign countries. The suggested act makes no provision for such agreements since it is felt that agreements with foreign governmental units may raise special problems. States having such boundaries might want to consider whether to devise means for extending the benefits of this suggested act to agreements between their subdivisions and local governments across an international boundary. Any state wishing to follow this course, might add appropriate provisions to the suggested act at the time of passage or might amend its statute later after experience with the legislation within the United States has been gained.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Purpose. It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Section 2. Short Title. This act may be cited as the Interlocal Cooperation Act.

Section 3. Definitions. For the purpose of this act:

(1) The term "public agency" shall mean any political subdivision [insert enumeration, if desired] of this state; any agency of the state government or of the United States; and any political subdivision of another state.

(2) The term "state" shall mean a state of the United States and the District of Columbia.

Section 4. Interlocal Agreements. (a) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state [having the power or powers, privilege or authority], and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.

(b) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of these participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following:

(1) Its duration.

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

(3) Its purpose or purposes.

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items 1, 3, 4, 5, and 6 enumerated in subdivision (c) hereof, contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board public agencies party to the agreement shall be represented.

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(e) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performances may be offered in satisfaction of the obligation or responsibility.

(f) Every agreement made hereunder that includes as a party thereto an officer or agency of this state or a public agency of another state or of the United States shall, prior to and as a condition precedent to its becoming effective, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted to him hereunder unless he finds that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within [ ] days of its submission shall constitute approval thereof.[1]

[(g) Financing of joint projects by agreement shall be as provided by law.]

Section 5. General, Transmission, or Distribution of Electricity. Nothing in this act shall be construed to increase or decrease existing authority of any public agency of this state to enter into agreements or contracts with any other public agency of this state or any other state or the United States with regard to the generation, transmission, or distribution of electricity or the existing powers of any private or public utilities.

Section 6. Filing, Status, and Actions. Prior to its entry into force, an agreement made pursuant to this act shall be filed with [the keeper of local public records] and with the [secretary of state]. In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

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[1] In states where there is a tradition of close state supervision of local affairs and where a general grant of authority for interlocal agreements would be unacceptable without some form of state review, all interlocal agreements might be made subject to review by the attorney general. It should be noted, however, that local governments in some states have had good experience with interlocal agreements in the absence of any requirement for state review or approval prior to their becoming effective.

Section 7. Additional Approval in Certain Cases. In the event that an agreement made pursuant to this act shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general pursuant to section 4(f) of this act. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorney general.

Section 8. Appropriations, Furnishing of Property, Personnel and Service. Any public agency entering into an agreement pursuant to this act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

Section 9. Interlocal Contracts. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which [[each public agency] or [any of the public agencies]] entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.[1]

Section 10. Separability. [Insert separability clause.]

Section 11. Effective Date. [Insert effective date.]

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[1] Interlocal contracts for services raise some problems different than those raised by interlocal agreements for joint enterprises. Existing law governing contracts by local governments should be examined to relate this authorization to them, if necessary. Additional provisions may be needed or desirable in this section. Provisions similar to those in subsection 4(f), the filing provisions of section 5, and the additional approval in section 6 could be considered in this connection.

31-91-10

CONSTITUTIONAL PROVISION FOR INTERGOVERNMENTAL COOPERATION

In recent years, new or revised state constitutions (notably those of Michigan, Alaska, and Hawaii) have contained specific provisions authorizing intergovernmental relations. Apparently, constitution makers have thought that interstate, federal-state and inter-local cooperation have reached a point where they would benefit from specific recognition in constitutional texts. Since the purpose of such provisions is to enable more flexibility in such cooperative endeavors than might otherwise be encouraged, they should be drawn in the broadest possible terms.

A suggested constitutional amendment, formulated by the New York State Joint Legislative Committee on Interstate Cooperation, is offered for the consideration of those who are contemplating specific provisions on intergovernmental relations. It authorizes interstate and federal-state cooperation. Inclusion of the phrase "any one or more foreign powers, including any governmental unit thereof" is merely to make sure that the cooperation authorized is no less broad than that contemplated by Article I, Section 10, Clause 3 (the compact clause) of the Constitution of the United States. With the addition of the bracketed optional language it will also specifically authorize intrastate intergovernmental cooperation, thereby covering the whole range of possible combinations of cooperating jurisdictions.

Since some of the more recent state constitutions contain general provisions dealing explicitly with intergovernmental relations, it may be that in the future, other states will follow this practice. Because of the stylistic variations in state constitutions, the adoption of such a change may necessitate conforming alterations in other parts of the constitutional document. The draft language suggested below is designed to reduce or avoid such additional changes to the greatest degree possible. However, each state should examine the situation to see how the wording of the amendment would fit into its own constitutional pattern and to determine what adaptations, if any, are desirable.

The theory on which this suggested constitutional amendment has been drafted is that the language should be broadly enabling in character. It is recognized that limitations of some sort may be desirable but these are believed to be more appropriate for statute than for constitutional provision. Attention is called to the Interlocal Contracting and Joint Enterprises Act (31-91-00). Limitations of the type contained therein may be illustrative of the situations in which statutory implementation or restriction of the constitutional authority here granted would be appropriate.

Suggested Constitutional Provision

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

Subject to any provision which the legislature may make by statute, the state, or any one or more of its municipal corporations and other subdivisions, may exercise any of their respective powers, or perform any of their respective functions and may participate in the financing thereof jointly or in cooperation with any one or more [municipal corporations or other subdivisions within this state or with] other states, or municipal corporations, or other subdivisions of such states, or with the United States, including any territory, possession or other governmental unit thereof, or with any one or more foreign powers, including any governmental unit thereof.

31-91-11

CONSTITUTIONAL BARRIERS TO INTERGOVERNMENTAL COOPERATION

In view of the widespread establishment of various arrangements for intergovernmental cooperation, a barrier that exists in some states needs to be reexamined. It is the constitutional status of persons holding state office who may be called upon to serve on commissions or other agencies which are administratively attached to other governmental units, but which have as their purpose the promotion or performance of a project for intergovernmental cooperation.

A suggested constitutional amendment formulated by the New York State Joint Legislative Committee on Interstate Cooperation authorizes state and local officials to serve on bodies concerned with intergovernmental affairs. It is offered for consideration in those states where it is desired to remove possible constitutional obstacles to such service.

An incomplete survey of state constitutions has revealed that at least thirty states have provisions in their constitutions which could be construed to bar such service for state and local officials. While it seems almost certain that the drafters of such provisions did not intend them to have any such effects, and while virtually all of them are far from compelling any such construction, three episodes during the past three years suggest that thought should be given to the problem.

The attorney general of Texas declined appointment as a member of the Commission on International Rules of Judicial Procedure because of a provision in the Texas constitution. The statute establishing the Commission provided for two members of the nine-man body to be state officials whose positions gave them experience and knowledge of the effect of the Commission's work on state courts and administrative agencies. A New York State senator resigned from the Advisory Commission on Intergovernmental Relations after being advised that the availability of compensation for service on the Commission (whether he accepted such payment or not) would raise a question under the state constitution as to his continuance in his senate seat. In 1967, the governor of Massachusetts declined to accept an appointment to the Advisory Commission because of a similar constitutional provision.

As the activities and interests of the federal and state governments become ever more closely intertwined, it is important that state officials be able to serve on such intergovernmental bodies so that they may provide responsible and direct representation for the states in matters of concern to them. Furthermore, such officials, while they are in office, have current and valuable experience coupled with a direct concern for the problems that are likely to call for service on intergovernmental bodies. Private citizens who accept appointment to intergovernmental bodies (however useful and appropriate their service may be on many occasions) cannot serve quite the same function.

The constitutional provisions which have begun to cause difficulty were originally designed to guard against "conflict of interest." They were adopted on the generally sound premise that a man who serves two masters may be in a difficult position dangerous to the public interest. But this premise would seem to be inapplicable and unreasonably confining in those instances where service in one capacity is actually in furtherance of the state's interest and is compatible with it.

It is possible that similar problems may arise for local officials whose services are desirable on intergovernmental bodies, although such instances of actual hardship in the recent past are not readily at hand. Indeed, the entire problem is a relatively new one because the use of such intergovernmental bodies as an instrument of federal-state relations is a recent development. Because the technique is so promising and valuable as a means of achieving coordination within the federal system, it is desirable for the states to examine their constitutions to make sure that no obstacles exist.

It should be noted that no constitutional difficulties appear to have been encountered by state officials serving on purely interstate bodies such as those created by interstate compact. However, in order to encourage the maximum degree of flexibility possible and to guard against any limiting implications from adoption of language specifically authorizing one type of intergovernmental service, but silent as to others, the suggested constitutional amendment is written in comprehensive terms. Further, the amendment recognizes that the "conflict of interest" question could be real in some situations. Consequently, it authorizes the state legislature by statute to impose such restrictions as it may find appropriate. Since the bulk of our "conflict of interest" laws are statutory in any case, such an arrangement would accord with well-known patterns in this field.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

Any other provision of this constitution to the contrary notwithstanding, an officer or employee of the state or any municipal corporation or other subdivision or agency thereof may serve on or with any governmental body as a representative of the state or any municipal corporation or other subdivision or agency thereof, or for the purpose of participating or assisting in the consideration or performance of joint or cooperative undertakings or for the study of governmental problems, and he shall not be required to relinquish his office or employment by reason of such service. The legislature by statute may impose such restrictions, limitations, or conditions on such services as it may deem appropriate.

31-91-12

STATE ASSISTANCE FOR INTERLOCAL COOPERATION

Many organizations of government officials have recognized the need for authority by local governments, especially in urban areas, to cooperate with each other where the efficient and economical provision of governmental services requires functions to be administered within geographic areas larger than the boundaries of the existing political subdivisions. Such cooperation permits local governments to cope more adequately with areawide problems, finance necessary services on an equitable basis, take advantage of the economies of scale, and avoid creation of special districts. There is included in this volume proposed state legislation authorizing localities to participate in joint undertakings with other localities having common interests. At least 45 states have adopted all or a portion of such general interlocal cooperation authority. Other proposed legislation includes voluntary transfer of functions between municipalities and counties, and removal of constitutional barriers to intergovernmental cooperation.

However, such legislation by itself does not actively promote joint undertakings nor permit a positive state role. In addition, states should consider the enactment of legislation to actively encourage joint undertakings by local governments having common program objectives affecting the development of urban areas overlapping existing political boundaries. A Georgia act, enacted in 1963, authorizes state aid where political subdivisions establish joint undertakings. It is an example of how other states might actively encourage joint urban development efforts by two or more of their political subdivisions.

Briefly, the Georgia act authorizes all state departments and agencies, empowered to assist individual political subdivisions in the state, to also assist any two or more such political subdivisions jointly in cases where the political subdivisions are "able and willing to provide for the consolidation, combining, merger, or joint administration of . . . any . . . function . . . by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof."[1]

In certain instances, the difficulty of financing a feasibility study for a proposed interlocal contract or agreement may discourage the local units at the outset. Provisions for state financial assistance for feasibility studies (sections 5 and 6) have been added by the Advisory Commission on Intergovernmental Relations to the Georgia law, all of which is reproduced below and suggested for consideration by other states wishes to furnish or make available services, assistance, funds, property and other incentives to any two or more localities in connection with joint undertakings.

The last sentence in section 1 authorizing the state to assume up to the entire cost of the consolidated program, and section 3 authorizing state agencies to consolidate their field offices for such consolidated programs are intended to meet Georgia's statutory needs which may not be present elsewhere. Other states considering this legislation may therefore not wish to include these provisions.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. **The state and all departments, boards, bureaus, commissions, and other agencies thereof are hereby authorized and empowered, within the limitations of the constitution, to furnish and make available services, assistance, funds, property, and other incentives to any two or more counties,**

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[1] Section 1, Act No. 303, *Georgia Laws 1963*, p. 354.

municipal corporations, public corporations, and other subdivisions of this state, or any combination thereof, in connection with any program of services, benefits, administration or other undertaking in which the state or any of its above-named agencies participates by furnishing supervision, services, property, administration of funds, where such counties, municipal corporations, public corporations, or other subdivisions are thereby able and willing to provide for the consolidation, combining, merger, or joint administration of such program or any part or function thereof, by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof. [The incentives hereinbefore referred to shall also include the assuming by the state or its agencies of a greater share, or where funds are available and such is deemed feasible, the entire cost of such participating program.][1]

Section 2. **The state and all of its aforesaid agencies are hereby authorized to execute such contracts, plans, or other documents as may be necessary or desirable to effectuate the purposes hereof.**

[*Section 3.* **The state and all of its aforesaid agencies are likewise empowered to establish and maintain area offices for such combined, consolidated, or merged undertakings.]**[2]

Section 4. **The state and its aforesaid agencies shall be authorized to prescribe such reasonable rules, regulations, and requirements, and to require the submission of such plans and reports from the participating units, as may be deemed necessary or desirable to the proper administration of this act.**

Section 5. **(a) Two or more political subdivisions may jointly request the [department of local affairs or other specified state agency] to authorize a grant for the purpose of conducting a study to consider the feasibility of an interlocal contract or agreement under which a governmental function or service now performed or capable of being performed singly by the requesting political subdivisions would be performed by contract by one party for another or jointly. The [director of specified state agency] may require that such information as necessary be furnished in connection with any application. Upon approval of such application, the [director] may authorize a grant which, for any one study, does not exceed the lesser of [$] or [ ] percent of the total estimated cost of the study.**

(b) An application having a school district as one or more of its requesting political subdivisions shall not be approved until the [director of state agency] has consulted with the [state education agency] and determined that it agrees with the approval.

(c) As a condition of approval, the [director] shall require the requesting political subdivisions or their designated agents to file a detailed final report upon the completion of the study.

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[1] As indicated in the explanatory statement, this language reflects Georgia's statutory needs and may not be appropriate in other states.

[2] As indicated in the explanatory statement, this language reflects Georgia's statutory needs and may not be appropriate in other states.

Section 6. The local contribution required to match the state grants authorized by section 2 of this act may be in the form of cash, services, facilities, equipment, working space, or other items of value acceptable to the [director of state agency].

Section 7. [Insert effective date.]

31-91-30

VOLUNTARY TRANSFER OF FUNCTIONS BETWEEN MUNICIPALITIES AND COUNTIES

It is suggested that states enact legislation authorizing the legislative bodies of municipalities and counties located within metropolitan areas to take mutual and coordinate action to transfer responsibility for specified governmental services from one unit of government to the other. Specifically, it is proposed that the states enact a statute authorizing voluntary transfer of functions between municipalities and counties within metropolitan areas to the extent agreed by the governing boards of these respective types of units.[1] If desired, the statute could spell out the functions authorized for such voluntary transfer in order to make sure that responsibilities carried on by counties as agents of the state were not transferred to municipal corporations. Within a particular metropolitan area, for example, such a statute would enable the board of county commissioners and the mayors and councils of municipalities to assess collectively the manner in which particular service-type functions were being carried out. By concurrent action, the governing boards might have the county assume functions such as water supply, sewage disposal, etc., throughout the area, relieving the municipalities of their respective fragmented responsibilities in those functional areas. Conversely, they might agree that the county government should cease to carry on certain functions within the boundaries of the municipalities, with the municipalities assuming such responsibility on an exclusive basis.

The following suggested legislation is limited in its applicability to metropolitan areas. This bill includes an illustrative enumeration of types of services eligible for transfer between county and city governments by concurrent action of their respective governing bodies, and prescribes the minimum subject matter to be covered in any official transferring action.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to provide for the transfer of functions between cities and counties."]

(Be it enacted, etc.)

Section 1. (a) "Metropolitan area" as used herein is an area designated as a "standard metropolitan statistical area" by the U.S. Bureau of the Census in the most recent nationwide census of the population.[2]

(b) "Local service function" as used herein is a local governmental service or group of closely allied local governmental services performed by a county or a city for it inhabitants and for which, under constitutional and statutory provisions, and judicial interpretations, the county or city, as distinguished from the state, has primary responsibility for provision and financing. [Without in any way limiting the foregoing, the following are examples of such local service functions: (1) street and sidewalk maintenance; (2) trash and garbage collection and disposal; (3) sanitary and health inspection; (4) water supply;

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[1] Some states may wish to grant such authority statewide, rather than only for metropolitan areas.

[2] Particular states may find it appropriate and desirable to apply a somewhat different definition from this, tailored to their particular circumstances. For example, a 1961 enactment in Colorado (H.B. 221) defines a metropolitan area as "a contiguous area consisting of one [illegible] more counties in their entirety, each of which has a population density of at least 15 persons per square mile."

(5) sewage disposal; (6) police protection; (7) fire protection; (8) library services; (9) planning and zoning; (10) . . ., etc.][1]

Section 2. (a) Responsibility for a local service function or a distinct activity or portion thereof, previously exercised by a city located within a metropolitan area, may be transferred to the county in which such city is located by concurrent affirmative action of the governing body of such city and of the governing board of such county.

(b) The [expression of official action][2] transferring such function shall make explicit: (1) the nature of the local service function transferred; (2) the effective date of such transfer; (3) the manner in which affected employees engaged in the performance of the function will be transferred, reassigned or otherwise treated; (4) the manner in which real property, facilities, equipment, or other personal property required in the exercise of the function are to be transferred, sold, or otherwise disposed between the city and the county; (5) the method of financing to be used by the receiving jurisdiction in the exercise of the function received; and (6) other legal, financial, and administrative arrangements necessary to effect the transfer in an orderly and equitable manner.[3]

Section 3. (a) Responsibility for a local service function, or a distinct activity or portion thereof, previously exercised by a county located within a metropolitan area may be transferred as hereinafter described to a city or cities located within such county.

(b) Responsibility for a county government's performance of a local service function within the municipal boundaries of such city or cities may be transferred to such city or cities by concurrent affirmative action of the governing boards of such county and of such city or cities.

(c) The expression of official action transferring such responsibility shall include all of those features specified in Section 2(b) above.

Section 4. [Insert appropriate separability section.]

Section 5. [Insert effective date.]

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[1] The list of illustrative functions may vary from state to state. Furthermore, the legislature may prefer to enumerate specifically the functions eligible for transfer.

[2] Insert appropriate language to describe the form that the official action required in subsection (a) of section 2 would take.

[3] States should insure that adequate provisions are made for residents of the area involved being informed at all times of which unit of government is responsible for a particular function. In addition, a state may desire to permit a proposal for the transfer of functions to be initiated through public petition.

31-91-40

COOPERATIVE TAX ADMINISTRATION AGREEMENTS

Some 70,000 counties, municipalities, towns, townships, school districts, and special districts now levy and collect taxes. Most employ only property taxes. A substantial number impose also one or more nonproperty taxes including sales, income, and excise taxes.

Local jurisdictions, particularly the smaller ones, find it difficult to finance adequate tax enforcement to obtain first quality taxpayer compliance and tax collections. The cost of tax enforcement in relation to collections is nonetheless high because the number of taxpayers within individual taxing jurisdictions is relatively small and local tax rates are necessarily relatively low.

In those situations where adjoining local jurisdictions employ the same kind of tax, the pooling of tax enforcement efforts and resources can improve tax collections with reduced cost of administration and reduced compliance burdens for taxpayers. The pooled administration of two or more local jurisdictions' taxes has proven successful in the administration of property taxes, as where the county assesses and/or collects the levies of some of the smaller taxing jurisdictions within its borders. It is potentially useful in other tax areas as well.

In a number of states statutory authority for cooperative tax administration is inadequate or totally lacking. The suggested legislation to authorize it is couched in general terms: (1) to embrace both property taxes and different kinds of nonproperty taxes, and (2) to permit two or more local jurisdictions to provide joint administration or to permit them to contract to administer one another's taxes.

Suggested Legislation

[Title should conform to state requirements]

(Be it enacted, etc.)

Section 1. For the purpose of reducing duplication of effort and to provide for more effective tax administration, a political subdivision of this state including a special district or governmental authority may enter into an agreement with other political subdivisions of this state for the assessment and collection of a tax levied by such jurisdictions. The agreement may provide for joint administration or for administration by one political subdivision on behalf of one or more political subdivisions that are parties to such an agreement and shall provide for the allocation of the cost of such administration among the parties.

31-91-50

REGIONAL COUNCILS OF PUBLIC OFFICIALS

Among the many devices proposed or used to enable citizens and local government officials of metropolitan areas to cope more effectively with the growing number of areawide problems is the regional or metropolitan council of public officials. These are voluntary associations of public officials, usually elected, from most or all of the governments of a metropolitan area, formed to seek a better understanding among the governments and officials in the area, to develop a consensus regarding metropolitan needs, and to promote coordinated action in solving their problems.

At least twenty regional councils have been established since the first, the Supervisors Inter-County Committee, was organized in 1954 in the Detroit area. Among the well-known councils, besides the Detroit group, are the Metropolitan Regional Council of New York, New Jersey, and Connecticut, in the New York City area; the Association of Bay Area Governments in the San Francisco area; the Mid-Willamette Valley Intergovernmental Cooperation Council (Salem, Oregon); and the Metropolitan Council of Governments in Washington, D.C.

Although councils vary with respect to their manner of establishment and membership, they usually have three characteristics: (1) They cut across or embrace several local jurisdictions, and sometimes do not stop at state lines. (2) They are composed of the chief elected officials of the local governments, and sometimes have representation from the state government. (3) An association of representatives from individual governments which retain their power to act as they please with reference to the decisions of the regional councils, they function primarily as forums for discussion, research, and recommendation only. None has powers to compel either participation in the first instance or acceptance of recommendations in the end. Such operating functions as they may be given by their participating governments are always legally subject to the right of any individual constituent to withhold its support. Each, therefore, is voluntary in the fullest sense of the word. (4) They are multipurpose, concerning themselves with many areawide problems. (5) They employ a full-time staff.

There has been a growing interest in regional councils, as reflected in the gradual increase in their number. It is anticipated, moreover, that the number will experience rapid expansion as a consequence of Section 1102(c) of the Federal Housing and Urban Development Act of 1965. This provision makes federal grants available to organizations composed of public officials whom (the Secretary of the Department of Housing and Urban Development) finds to be representative of the political jurisdictions within a metropolitan area or urban region for the purpose of assisting such organizations to undertake studies, collect data, develop regional plans and programs, and engage in such other activities as the Secretary finds necessary or desirable for the solution of the metropolitan or regional problems in such areas or regions. Grants may be as much as two-thirds of the estimated cost of the work assisted.

In light of these developments it seems that states would be well advised to grant local officials necessary authority to form regional councils. Two basic methods have been used to provide this authority. The first is passage of special acts by the state legislature creating each council. This is the method followed in the 1957 Michigan Legislature for the Supervisors Intercounty Committee (Michigan Public Acts 1957, No. 21). The alternative, and more common approach, is a general interlocal cooperation enabling act that permits local units of government to undertake jointly any action they are empowered to undertake separately. A model interlocal agreement act of this kind has been previously proposed by the Advisory Commission and is presented on page 31-91-00. Such general authority has been used to establish the Association of Bay Area Governments in California and the Mid-Willamette Valley (Oregon) Council of Governments.

A third statutory approach is provided in the statute presented below. This is a bill authorizing local governments to join together for the specific purpose of forming and operating a regional council of officials.

Section 1 provides that the governing bodies of any two or more general purpose units of local government, such as cities and counties, may establish a regional council of public officials. It authorizes agreements to be made with governing bodies of similar units in other states in order to permit establishment of a council which would draw membership throughout the entire territory of an interstate metropolitan area. Some states might wish to broaden permissive membership to include representatives from local school districts or from the state government.

Section 2 specifies that each constituent local unit shall be represented by its elected chief executive or if it has no elected chief executive, by a member of its governing body chosen by that body. Reflecting the voluntary nature of the organization, it further provides that any constituent unit may withdraw at will upon giving 60 days' notice.

Two types of powers are authorized by section 3. The first, which may be exercised by vote of the council, includes the power to make studies of areawide problems of common interest, promote cooperation among the members, and make recommendations to the members and other public agencies operating in the area. These powers are purely of an advisory, research, encouragement, and recommendation nature. They do not involve carrying out any kind of "line" function normally carried out by the member governments within their individual jurisdictions.

The second category of powers are all other powers that the member governments may exercise individually. Since these would involve direct public services, the application of such powers to each participating government is a matter of basic importance to the governing bodies of those governments. Therefore it is provided that for such powers to be exercised by the council, appropriate action by each constituent government would be required.

The remaining sections authorize the council to adopt by-laws, employ staff and consultants, and receive funds from all sources, including grants from the federal government. Governing bodies of the member governments are permitted to appropriate funds for the council.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize regional councils of public officials."]

(Be it enacted, etc.)

Section 1. Establishment. The [governing bodies] of any two or more counties, cities, [other general purpose units of local government] by appropriate action, may enter into an agreement with each other, or with the governing bodies of any counties, cities, [other general purpose units as above] of any other state to the extent that laws of such state permit, for establishment of a regional council of public officials.

Section 2. Membership. Membership of the council shall consist of one representative from each county, city, [other general purpose units] entering into the agreement. The representative from each member county, city, [other general purpose units] shall be the elected chief executive of the member county, city, [other general purpose units], or, if such county, city, [other general purpose units] does not have an elected chief executive, a member of its governing body chosen by such body to be its representative.[1] Any county, city, [other general purpose units] which has become a member of the council may withdraw upon 60 days notice subsequent to formal action by its governing body.

Section 3. Powers and Duties. (a) The council shall have the power to: (1) study such area governmental problems common to two or more members of the council as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions, and regional development; (2) promote cooperative arrangements and coordinate action among its members; and (3) make recommendations for review and action to the members and other public agencies that perform functions within the region.

(b) The council may, by appropriate action of the governing bodies of the member governments, exercise such other powers as are exercised or capable of exercise by the member governments and necessary or desirable for dealing with problems of mutual concern.

Section 4. By-Laws. The council shall adopt by-laws designating the officers of the council and providing for the conduct of its business.

Section 5. Staff. The council may employ such staff, and consult and retain such experts, as it deems necessary.

Section 6. Finances; Annual Report. (a) The governing bodies of the member governments may appropriate funds to meet the expenses of the council. Services of personnel, use of equipment and office space, and other necessary services may be accepted from members as part of their financial support.

(b) The council may accept funds, grants, gifts, and services from the government of the United States or its agencies, from this state or its departments, agencies or instrumentalities, or from any other governmental unit whether participating in the council or not, and from private and civic sources.

(c) It shall make an annual report of its activities to the member governments.

Section 7. Separability. [Insert separability clause.]

Section 8. Effective Date. [Insert effective date.]

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[1] If the area contains many local governments, states may wish to provide another basis of representation, analogous to that provided in model legislation for a metropolitan planning commission (see page 31-32-00) or a metropolitan functional authority (see page 31-63-00). States may also wish to consider including other local government units for membership, such as school districts and special districts; and may wish to provide for participation by the state and federal governments.

31-91-60

STATE AUTHORITY OVER MUNICIPAL AND SPECIAL DISTRICT BOUNDARY ADJUSTMENTS

Only the States have the power to halt the chaotic spread of special districts and small municipalities within existing and emerging metropolitan areas. States should provide rigorous statutory standards for establishing new municipalities and special districts, changing the boundaries of existing local units, and reducing, where desirable, the number of jurisdictions within metropolitan areas, through consolidation or dissolution.

States should adopt one of the two principal approaches for exercising surveillance over local government boundary adjustments. The first approach, State review of local actions, has been adopted by Minnesota, which has established a three-member State commission, appointed by the Governor, to review all incorporation proposals and to approve all proposals to annex unincorporated territory. The following draft legislation provides for State agency review of local boundary changes. The second approach has been adopted by California, and involves the establishment of local agency formation commissions, usually consisting of two county officials, two city officials, and one member representing the general public, which have jurisdiction over proposed boundary adjustments within their respective counties. For States desiring to follow the second approach, certain amendments to the draft bill, discussed later, will be necessary.

If local boundary adjustment powers are placed in the hands of a State agency, or State empowered local bodies, the State legislature should establish standards of economic, geographic, and political viability to guide these agencies. Some of the factors to be considered in evaluating the viability of local governments are: jurisdictions large enough to cope adequately with the forces that create the problems to be met; ability to raise adequate revenues equitably; flexibility to adjust governmental boundaries; organization as general purpose rather than single purpose governments; adequacy of area to permit economies of scale; and accessibility and popular control by the people.

The suggested comprehensive statute vests authority in a State board to propose and review petitions for all types of municipal and special district boundary adjustments. The legislation is based in part on the model act published in 1965 by the Harvard Student Legislative Research Bureau.[1] Section 1 enunciates a State policy of discouraging competition to extend municipal boundaries; insuring adequate quality and quantity of urban services; maintaining the financial integrity of certain municipalities and special districts; and achieving ultimately reducing the number of units of local government in metropolitan areas. Section 2 deals with definitions.

Section 3 of the statute establishes a State boundary adjustment board in an appropriate existing State agency in charge of local affairs. The board consists of three members appointed by the Governor and serving for overlapping terms. The powers and duties, voting procedures, and provisions for compensation of board members are also provided in this section.

Section 4 empowers the board to study, either at its own discretion or upon the written request of any regional planning agency or local government, the need for and the feasibility of boundary adjustments. These studies would provide the factual basis for the board's initiation of boundary adjustment proceedings. Section 5 provides two approaches by which action may be taken to change municipal or special district boundaries. The board may commence proceedings by issuing an order requiring municipalities or special districts to submit a plan for boundary adjustments. Boundary adjustment proceedings may also be initiated by governing bodies of affected municipalities; by areawide planning bodies; by ten percent of the registered voters of the municipality, special district, or territory; or by owners of 25 percent of the assessed value of real property in the territory.

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[1] "An Act to Establish Standards and Procedures for Municipal Boundary Adjustment," *Harvard Journal on Legislation,* Vol. 2, No. 2 (June 1965), pp. 239-277.

Section 6 authorizes the establishment of boundary committees to hear and decide each boundary adjustment case. A committee consists of the three-member State board plus two or more residents representing the county or counties containing the territory affected by the boundary adjustment. However, in the case of consolidation proceedings, local representatives are selected by the affected municipalities. If the petition involves the creation or boundary adjustment of a special district, the legislative body of the municipality or county empowered to establish the district may appoint two residents. Each board member and each local representative has one vote, except that if there are more than two local representatives, then each is given an equal fraction of the total of two votes. This procedure is consistent with the assumption that the statewide interest should outweigh local interests.

Section 7 prescribes the hearing procedures. Notice must be given to each governmental entity involved, to each planning body that has jurisdiction in a governmental entity or entities affected, and to the general public.

Sections 8 through 10 set forth the standards for committee evaluation of proposals for annexation, detachment, consolidation, and dissolution of municipalities and special districts. The standards provide the necessary legislative guidelines for committee action, without narrowly restricting their administrative discretion.

The legislative standards for annexation are phrased rather generally to reflect a broad policy of allowing consideration of unusual factors which might require boundary adjustment prior to any actual urbanization. While there is a presumption in favor of annexation in the legislative standards of this draft bill, those dealing with detachment are restrictive.

The standards for incorporation of municipalities or the creation of special districts are flexible with respect to population limitations, since minimum size requirements for incorporation in densely populated areas should probably differ from those for sparsely populated sections. The most important standard is the requirement that the territory be amenable to separate municipal government or the establishment of a separate special district. Thus, the territory must have traits that make separation more desirable than annexation.

The criteria, for dissolution contain two distinctive features not found in other boundary adjustment proceedings. In considering dissolution the committee must consider the deviation of the municipality or the special district to be dissolved, from the regional norm with regard to (1) the ratio of assessed valuation to number of residents, and (2) the per capita cost of providing public services. These criteria would expose the more obvious enclaves and tax havens and provide the basis for meaningful action to reduce the inequities between "have" and "have not" jurisdictions.

Section 11 deals with the important question how the financial allocation should be carried out for each type of boundary adjustment. Section 14 provides for judicial review. No appeal, however, may be brought after the effective date of the boundary adjustment.

The suggested legislation may be adapted for use by those States wishing to establish local government bodies to review and approve boundary adjustments for municipalities and special districts. These agencies may be composed of executive and legislative officials of the county government and municipalities within the county and would be activated only when and if the need arose. To accomplish this approach Section 3(a) would require amendment as follows:

(a) A county boundary adjustment commission [hereafter called commission] is created in each county of the State. The Commission shall consist of [five] members selected as follows:

(1) [two] representing the county, each of whom shall be a county officer appointed by the [county governing body];

(2) [two] representing the cities in the county, each of whom shall be a city officer appointed by the [chief executive officers] of the cities within the county at a joint meeting; and

(3) [one] representing the general public, who shall be chairman of the Commission, appointed by the four other members of the Commission.

(b) The term of each member shall be four years and until the appointment and qualification of his successor, except that the term of each county officer and each city officer shall expire upon the termination of his county or city office. Any city or county member may be removed by his appointing authority.

(c) Vacancies on the Commission shall be filled for the unexpired term by the appointing authority which originally appointed the member whose position has become vacant.

Section 6 of the draft legislation would be dropped and minor changes in language within other Sections would also be required to reflect local rather than State jurisdiction and procedures. However, the legislative standards and criteria and the provision for financial allocations should require few, if any, changes.

[Title should conform to State requirements. The following is a suggestion: An act establishing a State boundary adjustment board to review proposals for the incorporation, consolidation, annexation, dissolution or detachment of municipalities and special districts.]

(Be it enacted, etc.)

***Section 1. Purpose.* It is the purpose of this Act to provide a method for guiding and controlling the creation and growth of municipalities and special districts in metropolitan areas, in order to prevent haphazard extension of municipal boundaries, assure adequate quality and quantity of public services and the financial integrity of units of local government, and reduce the number of uneconomic units of local government.**

***Section 2. Definitions.* As used in this act:**

(1) "Annexation" means the alteration of the boundaries of a municipality or special district to add or detach territory.

(2) "Board" means the State Boundary Adjustment Board.

(3) "Boundary adjustment" means any annexation, detachment, incorporation, consolidation, or dissolution.

(4) "Committee" means the board and local representatives acting together as a single body.

(5) "Community" means the area surrounding a municipality or special district, which forms an economic and socially related region.

(6) "Consolidation" means the merging of two or more municipalities or two or more special districts.

(7) "Detachment" means the alteration of a municipality or special district to exclude territory.

(8) "Dissolution" means the dissolving of the corporate status of a municipality or special district.

(9) "Incorporation" means the establishment of an incorporated city or village [of any class].

(10) "Metropolitan area" means an area designated as a "standard metropolitan statistical area" by the U. S. Bureau of the Census.

(11) "Municipality" means an incorporated city or village [of any class].

(12) "Special district" means [any political subdivision of the state organized for the purpose of performing prescribed functions within limited boundaries.] [1]

(13) "Territory" means the area proposed to be annexed, detached, or incorporated.

Section 3. State Boundary Adjustment Board. (a) *Creation and Appointment.* A state boundary adjustment board is created, and for administrative purposes is located in [appropriate State agency or department in charge of local affairs]. The board shall consist of [three] members appointed by the governor [with the advice and consent of the Senate]. The governor shall select the chairman from among the members. The first three appointments made under the act shall be for terms of [two, four, and six] years, respectively. Each subsequent regular appointment shall be for a term of [six] years. If for any reason a vacancy occurs, the governor [with the advice and consent of the senate] shall appoint a new member to fill the unexpired term. Members are eligible for reappointment.

(b) *Powers and Duties.* The Board shall:

(1) adopt standards and procedures, consistent with the provisions of this act, for the initiation and evaluation of proposals for the incorporation, consolidation, annexation, dissolution, or detachment of municipalities and special districts;

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[1] Some States may wish to define special districts by reference to the statutes authorizing their creation.

(2) conduct studies of municipal and special district boundary reorganization problems throughout the State;

(3) issue orders, when appropriate, requiring municipalities and special districts to submit, individually or jointly, a plan for boundary adjustment in conformance with guidelines set forth in such orders;

(4) initiate proceedings based on its own studies and findings for boundary adjustments, and make preliminary rulings on petitions received for boundary adjustments, in accordance with section 5;

(5) establish a committee to include local representatives to rule on a boundary adjustment case, in accordance with section 6;

(6) hold hearings on requests for boundary adjustment and determine what, if any, financial allocations should be made, if the adjustment is approved.

(7) subpoena witnesses and documents or other materials as set forth in section 6(d);

(8) submit each fiscal year a written report to the legislature and the governor stating the number of proceedings initiated, the outcome of the proceedings, expenses incurred, and other pertinent information; and

(9) employ a secretary and other personnel.

(c) *Vote.* An affirmative vote by a majority of the board is required to take action.

(d) *Compensation.* Each member of the board shall receive compensation of $[ ] per diem plus travel and other reasonable expenses for meetings, hearings, and other official business.

Section 4. Board Studies. The board, in its discretion, or upon the written request of any regional planning agency or any municipality, county, or special district, may conduct studies relating to the need for, and the feasibility of, boundary adjustments. These studies shall be made for metropolitan areas where the board finds that urban growth may require boundary adjustments in order to provide and maintain essential urban services. Factors to be studied may include demographic and land area characteristics, per capita assessed valuation, need for organized municipal services, topographic features, cost and adequacy of governmental services and controls, future needs for such services and controls, and the probable effect of alternative courses of action on the local governmental structure of the community.

Section 5. Initiation of Proceedings. (a) *Board Proposals.* Based on findings in studies made in accordance with section 4, the board may issue an order requiring certain municipalities or special districts to submit, within [12] months, a plan for boundary adjustments. The local plan shall include any needed boundary adjustments and creation of new municipalities or special districts which would contribute toward the formation of local government units having adequate area, population, and assessed valuation for: effective self-government; efficient and economic provision of services; exercise of adequate land-use controls; and fiscal soundness to provide the financing of an adequate level of service without placing an undue burden on the taxpayers. The local plan shall have the same effect as a petition, except that a preliminary ruling under section 5(c) is not required.

(b) *Petitions.* The board shall initiate proceedings for boundary adjustments upon receipt of a petition from the governing body of an affected municipality or special district; the governing body of the county wherein the territory, or part of it, is located; the metropolitan or areawide planning authority in the metropolitan area wherein the territory, or part thereof, is located; [ten][1] percent of the registered voters in the municipality or special district; [ten][1] percent of the registered voters in the territory; or the owners of [25][1] percent of the assessed value of the real property in the territory.

A petition must contain a statement of the boundary adjustment proposed; a statement of the reasons for the proposed boundary adjustment; an accurate map of every municipality, special district and territory involved; and a description of the character, land-use, and facilities of either the territory or, in the case of consolidation or dissolution, the municipalities, or special districts involved.

The Board may combine petitions which concern the same territory, or parts of it, or the same municipalities or special districts, if such a combination will not cause an unreasonable delay in the processing of the petitions.

(c) *Preliminary Rulings and Notification.* Within a reasonable time after it receives a petition, the board shall meet and make a preliminary ruling on whether to dismiss the petition. The board may rule to dismiss the petition only if it finds that:

(1) the petition does not comply with the provisions of this section or the standards or procedures of the board;

(2) the request for boundary adjustment is frivolous; or

(3) substantially the same boundary adjustment has been disapproved by a committee within [two] years prior to the date the petition is received by the board.

If the petition is not dismissed, the board shall notify those governing bodies required to appoint local representatives under section 6(a) and 6(b).

Section 6. Boundary Adjustment Committee. (a) *Members; Appointment of Local Representatives for Municipal Boundary Adjustments.* If a petition is not dismissed by the board under section 5(c), a committee shall be established to rule on the boundary adjustment proposed in the petition. The committes shall consist of the members of the board and two or more local representatives appointed as follows:

(1) if the petition is for an incorporation, annexation, detachment, or dissolution the county [governing body] shall appoint two residents of the county;

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[1] It may be desirable to follow customary state practice for initiating petitions.

(2) if the petition concerns a territory located in two or more counties, the [governing body] of each county concerned shall appoint one resident of that county;

(3) if the petition is for the consolidation of two or more municipalities, the legislative body of each municipality concerned shall appoint one resident of that municipality;

(4) if two or more petitions, none of which is for consolidation, are combined under section 5(b), appointment shall be in accordance with (1) or (2) as if there were but one petition;

(5) if two or more petitions, all of which are for consolidation, are combined under section 5(b), the legislative body of each municipality proposed for consolidation shall appoint one resident of that municipality; and

(6) if a petition for consolidation is combined under section 5(b) with one or more other petitions, at least one of which is for a boundary adjustment other that consolidation, the legislative body of each municipality proposed for consolidation shall appoint one resident of that municipality and the [governing body] of every county concerned shall also appoint local representatives as in (4).

(b) *Members; Appointment of Local Representatives for Special District Boundary Adjustments.* If the petition is for the creation or boundary adjustment of a special district, the legislative body of the municipality or county, or such other local authority as is empowered to establish the special district, shall appoint two residents of the district.[1]

(c) *Eligibility and Compensation.* A local representative shall be a resident of the county or municipality from which he is appointed and a registered voter eligible to vote in local elections.

A local representative shall receive compensation of $[ ] per diem plus travel and other reasonable expenses for meetings, hearings, and other official business.

(d) *Duties.* The committee shall hold hearings as required in section 7; approve or disapprove petitions for boundary adjustment; and make financial allocations, pursuant to section 13.

(e) *Amendments to Petitions.* The committee may amend a petition, prior to the day of voting under subsection 6(f), by altering the shape and size of the territory.

(f) *Voting.* Each board member and each local representative has one vote, except that if there are more than two local representatives, each local representative has an equal fraction of a total of two votes.

After a hearing is completed, pursuant to section 7, and after due deliberation, the committee shall decide whether to approve the proposed boundary adjustment; and if the boundary adjustment is approved, what, if any, financial allocations should be made.

(g) *Quorum.* A quorum of two board members and one local representative is required for the committee to act on substantive matters.

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[1] In the case of special districts established by statutory law, the appointments should be made by the governor.

(h) *Effective Date.* When a boundary adjustment is approved, the committee shall determine the date on which the boundary adjustment and financial allocations take effect. That date shall be not less than 90 days nor more than one year from the date on which the committee approves the boundary adjustment.

(i) *Notification.* The committee shall notify the [secretary of state] and the [clerks] of the counties, municipalities, and special districts affected, of its ruling. The ruling shall report the vote of each member of the committee, an explanation of the decision on the boundary adjustment, an accurate map of every municipality, special district and territory involved, and the effective date of the boundary adjustment.

Section 7. Hearings. (a) The committee shall conduct a hearing within 90 days from the date on which a petition is received by the board, but if two or more petitions are combined under section 5(b), the 90-day period begins on the day of the receipt of the last of the petitions. At least 30 days before the commencement of the hearing, the board shall give notice of the time and place to each governmental entity involved; to each planning body that has jurisdiction in a governmental entity involved; and to the public.

(b) At the hearing the committee shall receive all information, written or oral, that any person wishes to present and that is relevant to the resolution of the questions before the committee; and shall seek all information, written or oral, that the committee believes will be useful to the resolution of the questions before the committee. If the committee so requests, the Board may subpoena witnesses and documents relevant to these questions.

(c) If the committee amends a petition, the board shall give notice of the amendment to each of the parties. If the notice is given less than seven days before the commencement of the hearing, or during the hearing, or after the termination of the hearing, and if any person informs the Board within seven days from the date notice is given, of his desire to present information relevant to the amendment, the committee shall continue the hearing for a reasonable time, or reopen it within a reasonable time, to receive that information.

Section 8. Standards for Boundary Adjustments. (a) *Adjustment Must be Appropriate.* The committee shall approve a proposed boundary adjustment only if the proposal is for the type of adjustment that is more beneficial to the community than are other available alternatives.

(b) *Annexation.* The committee shall approve a proposed annexation only if (1) the present or probable future character of the territory is urban; (2) the municipality or special district is able and willing to provide necessary services to the annexed territory within a reasonable time after annexation; and (3) the territory is compact, and contiguous to the municipality or special district.

(c) *Detachment.* The committee shall approve a proposed detachment only if the territory, after detachment, is not surrounded by the municipality or the special district.

(d) *Municipal Incorporation and Creation of Special Districts.* The committee shall approve a a proposed municipal incorporation or special district creation only if the territory is amenable to separate municipal government or, in the case of a special district, is appropriate for the establishment of special functions; and if the proposed municipality or special district will be able to provide necessary services within a reasonable time.

(e) *Consolidation.* The committee shall approve a proposal consolidation only if the municipalities or special districts to be consolidated are contiguous.

(f) *Dissolution.* The committee shall approve a proposed dissolution only if the county or another municipality is able to provide necessary services to the municipality or special district being dissolved; and if the municipality to be dissolved will not be surrounded by other municipalities.

Section 9. Criteria for Applying Standards. (a) *General.* In determining whether the standards for a proposed boundary adjustment have been met, the committee shall consider, but is not limited to the consideration of, the following criteria:

(1) The effect of the proposed adjustment on population growth and on the assessed valuation of the real property in any affected unit of government or territory.

(2) Topography and other physical characteristics of the geographical area involved.

(3) The extent to which any affected territory, municipality, or special district, is interdependent with others that are affected by the proposal.

(4) The effect of the proposed adjustment upon the governmental operations of a municipality or special district.

(5) The need for governmental services.

(6) The extent to which municipal or special district services are, or will be, commensurate, or incommensurate, with taxes and other charges.

(7) Whether the present and probable future character of the area or areas affected by the proposal is urban, suburban, or rural.

(8) The likelihood that the residents of any affected area will receive proper sanitation, safety, school, and other necessary services.

(9) Land-use plans that pertain to any governmental unit or area involved.

(b) *Special Criteria for Annexation.* If annexation is proposed, the committee shall consider (1) the ability of a county receiving revenue from the territory to be annexed, to finance its governmental operations, if revenue will be lost when the territory is annexed, and (2) the ability of the municipal or special district to assume a share of the existing indebtedness of, and to purchase property from counties, as provided for in section 11(a).

(c) *Special Criteria for Detachment.* If detachment is proposed, the committee shall consider (1) the ability of a municipality, special district, or county to finance its governmental operations without the revenues which will be lost when territory is detached, and (2) the ability of the receiving county to assume shares of the existing indebtedness and to purchase property from the municipality from which an area is detached.

(d) *Special Criteria for Municipal Incorporation or Special District Creation.* If municipal incorporation or special district creation is proposed, the committee shall consider (1) the effect upon the ability of the part of a county that survives a municipal incorporation or special district creation to finance its governmental operation without the revenues which will be lost if the territory is incorporated; (2) the adequacy of the county form of government to cope with the problems of the territory; and (3) the ability of the territory to assume a share of the existing indebtedness of, and to purchase property from, the county which survives the municipal incorporation or special district creation.

If a petition proposes municipal incorporation or special district creation of a territory any part of which is closer than [four] miles to an incorporated city, the board, before ruling on the petition, shall consider whether it should initiate proceedings for the annexation of the territory to that city.

(e) *Special Criteria for Dissolution.* If dissolution is proposed, the committee shall consider (1) the deviation of the municipality or special district to be dissolved from the norm within the community in the per capita cost of providing public services; (2) the deviation from the norm within the community in the ratio of assessed valuation to number of residents; and (3) the ability of the receiving county to assume shares of the existing indebtedness.

Section 10. County Boundaries Not a Barrier. County boundaries are not a barrier to any type of boundary adjustment authorized by this Act.

Section 11. Financial Allocations. (a) *Annexation or Incorporation.* If an annexation or incorporation of a municipality or an annexation or creation of a special district is approved, the committee shall determine what portion, if any, of the existing indebtedness of the counties receiving revenue from the territory shall be assumed by the municipality or incorporated territory or special district. No municipality or special district may be required to assume indebtedness of a county if that county collects revenues at the same rate throughout the county regardless of municipal or special district boundaries. If a county owns property located or used by the territory, and if the county requests, the committee shall determine whether or not the municipality the incorporated territory, or the special district must purchase that property. The committee shall also determine a fair price for the property.

(b) *Detachment.* If a detachment is approved, the committee shall determine what portion, if any, of the existing indebtedness of the municipality or special district shall be assumed by each county of which the detached territory will become a part; and, upon request of a municipality or special district that owns property located or used in the territory, determine whether that property must be purchased by any county of which the detached territory will become a part. The committee shall also determine a fair price for the property.

(c) *Consolidation.* If a consolidation is approved, the municipality formed by the consolidation shall assume all indebtedness of, and receive title to all property owned by the pre-existing municipalities or special districts.

(d) *Dissolution.* If a dissolution is approved, the county shall assume all indebtedness of, and receive title to, all property owned by the pre-existing municipalities or special districts.

Section 12. Judicial Review. All final decisions of a committee and any dismissal of petitions shall be reviewable [pursuant to the state administrative procedure act] (by a proceeding in the court of appropriate jurisdiction]. No appeal may be brought after the effective date of the boundary adjustment.

Section 13. Separability. [Insert separability clause].

Section 14. Effective Date. [Insert effective date].

32-40-00

ADOPTION AND AMENDMENT OF MODEL UNIFORM CODES BY REFERENCE

Building regulations that are uniform from one jurisdiction to another in metropolitan areas have been singled out by the Advisory Commission on Intergovernmental Relations as one of the keys to improved local building and housing code practices. Modernization and uniformity of building codes in metropolitan areas would contribute to lower housing costs. In its report entitled *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs,* the Advisory Commission recommended "(a) the enactment by the states of legislation authorizing the adoption of uniform housing and building codes within metropolitan areas, and (b) action by local governments to utilize such authority . . ." to encourage uniformity among municipal codes, increase the coverage, and allow more expert application of reasonable requirements. In its report, *Building Codes: A Program for Intergovernmental Reform,* the Commission points out that local governments are frequently slow to adopt model code changes and recommends that states permit the incorporation of changes made by the model code promulgating body into the local code by administrative action. This would facilitate keeping codes up to date to that localities would not be enforcing antiquated building codes. Any unnecessary lag by local legislative bodies in incorporating code changes reflecting technological advances may result in a decrease in health and safety protection and an increase in building costs.

The general rule with respect to adoption of municipal ordinances is that they must be published if they are to be valid, but incorporation by reference of state statutes or any official map or other regulation already in existence and part of the public record of the city is permitted. The widespread acceptance of such incorporation by reference, however, does not settle the question of the validity of adoption by reference of various technical codes prepared by nationally recognized trade or professional associations. These codes are generally long, exhaustive treatments of the respective subjects with which they deal. Their adoption by reference, when permitted, enables a municipality to avoid the very considerable expense incident to their publication.

Draft legislation, authorizing municipalities to incorporate by reference the provisions of nationally known technical codes and model codes prepared by state and federal agencies, was contained in *Suggested State Legislation – Program for 1963.* The suggested legislation closely follows a model act developed in 1961 by the National Institute of Municipal Law Officers. A modified version of the 1963 draft bill is presented below by expanding subhead (3) of section 1 of the bill to clearly authorize adoption by reference of such building codes as may be prepared by county, metropolitan, or regional agencies for local governments within the boundaries of such county or agencies, as well as model codes prepared by professional code organizations and federal and state agencies and by adding language in section 2 providing for amendment by reference.

Uniform building code committees, representing local governments within the metropolitan area, have been established in several places in the country. Denver and the surrounding counties and incorporated municipalities formed the Metro Building Code Committee to prepare a comprehensive uniform building code for adoption by the local governments within the metropolitan area. The uniform code developed by the Committee will be adopted first by Denver with other participating governments then adopting the Denver code by reference. In Atlanta, the metropolitan planning commission is undertaking preparation of uniform housing, plumbing and building codes for adoption throughout the five-county planning area. Uniform code committees have also been established in San Francisco and Detroit to develop uniform standards and in the Washington, D. C. metropolitan area, a committee of the Council of Governments, representing local governments in Virginia and Maryland, is preparing a uniform plumbing code for adoption by reference. State enabling legislation, therefore, should authorize municipalities to adopt by reference codes prepared by such county or metropolitan committees where such codes are readily available to the general public. The revised draft bill below would also permit such action.

To assist in keeping the local code current, language in section 2 permits local governments which have adopted a nationally recognized model building code by reference to incorporate subsequent changes made by the model code promulgating agency into the local code by administrative rather than legislative action. Provision is made for the regulation incorporating the amendment by reference to be come effective only after it has laid before the local legislative body for a specified period. During this period the legislative body can by resolution disapprove the amendment.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize municipalities to incorporate by reference the provisions of nationally known technical codes or codes prepared by state, metropolitan, or regional agencies."]

(Be it enacted, etc.)

Section 1. Definitions. As used in this act, the following terms shall have the meanings indicated, unless the context otherwise requires:

(1) "Municipality" means any [local government unit which under state law may adopt ordinances or local laws];

(2) "Rules" means rules, regulations, and general orders that have general application;

(3) "Code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, this state or any agency thereof, counties of this state or any agency thereof, and any official metropolitan or regional agency within the state publishing a code; and shall include specifically, but shall not be limited to: building codes; plumbing codes; electrical wiring codes; health or sanitation codes; fire prevention codes; inflammable liquids codes; codes for the slaughtering, processing, and selling of meats and meat products for human consumption; codes for the production, pasteurizing, and sale of milk and milk products; together with any other code which embraces rules pertinent to a subject which is a proper municipal legislative matter;

(4) "Published" means printed or otherwise reproduced.

Section 2. Adoption and Amendment of Codes by Reference. (a) Any municipality may adopt or repeal [an ordinance] [a local law] which incorporates by reference the provisions of any code or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of such code in full. At least [ ] copies of such code, portion, or amendment which is incorporated or adopted by reference, shall be filed in the office of the clerk of the municipality and there kept available for public use, inspection, and examination. The filing requirements herein prescribed shall not be deemed to be complied with unless the required copies of such codes, portion, or amendment or public record are filed with the clerk of such municipality for a period of [90] days prior to the adoption of the [ordinance] [local law] which incorporates such code, portion, or amendment by reference. If such a code, portion, or amendment is promulgated by a county, or metropolitan or regional agency, the adopting unit of local government must be within the territorial boundaries of such county or agency.

(b) In those municipalities that have adopted building codes by reference pursuant to subsection (a), the [appropriate local administrative official] may adopt administrative regulations which incorporate by reference such subsequent changes and amendments thereof, properly identified as to date and source, as may be adopted by the agency or association which promulgated the code, if the [appropriate local administrative official] finds that the changes and amendments conform to nationally recognized standards, accepted engineering practices, or state and national model codes.

(c) Any administrative regulations which incorporate building code amendments by reference shall become effective upon the expiration of [sixty] calendar days or after the [fourth] official meeting of the [legislative body] following the promulgation of the regulation, whichever is later, unless within that period of time a [resolution] disapproving such administrative regulation shall have been adopted by the [legislative body].

(d) In addition to complying with all requirements for the issuance of administrative regulations by [the administrative official], the filing requirement of subsection (a) of this section and the publication requirement of section 3 of this act shall be complied with in adopting amendments to building codes by administrative regulation.

Section 3. Publication of Adopting Ordinance. Nothing contained in this act shall be deemed to relieve any municipality of the requirement of publishing in full the [ordinance] [local law] which adopts such code, portion, or amendment by reference, and all provisions applicable to such publication shall be fully and completely carried out as if no code, portion, or amendment were incorporated therein.

Section 4. Adoption of Penalty Clauses. Any [ordinance] [local law] adopting a code, portion, or amendment by reference shall state the penalty for violating such code, portion, or amendment, or any provision thereof separately, and no part of any such penalty shall be incorporated by reference.

Section 5. Separability. [Insert separability clause.]

Section 6. Effective Date. [Insert effective date.]

33-21-00

STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL PROPERTY TAXING AND BORROWING POWERS

States have a legitimate and strong concern with the property taxing and borrowing powers and practices of their local governments. The property tax provides seven out of eight local tax dollars, making it the most important source of local government revenue. The prudent use of debt in a responsible and locally responsive manner is indispensable to the financing of capital outlays on a scale adequate to meet pressing local government needs.

In many states, existing constitutional and statutory restrictions on the taxing and borrowing powers of local governments in terms of the assessed valuation of locally taxable property, coupled with requirements for specific referendum approval of proposed bond issues and property tax levies, actually handicap local governments in supplying their citizens and industries with public services and community facilities indispensable to growth and prosperity. They constitute a serious impediment to local self-government, handicap the self-reliance of local communities, and impel them toward increased financial dependence on the state and the Federal Government.

These restrictions are the hangover of the reaction to abuses of county and municipal taxing and borrowing power dating back as much as a century. They have been rendered obsolete by subsequent developments in the quality and scale of local governments and their financing, in the competence of public finance officials, in more widespread citizen oversight over the conduct of local government, and in the market mechanism for the sale of municipal securities.

While these restrictions may restrain the total volume of property taxes and borrowing to some extent, any benefits are vastly outweighed by their tendency to lead local governments into devious taxing, borrowing, and financial practices and by their undesirable effect on intergovernmental relationships, the structure of local government and on the property tax system itself. By resorting to revenue bond financing to evade debt limits, local governments pay higher interest rates, unnecessarily adding to the cost of government. Where local property taxes and debt are limited to a percentage of assessed valuation, the amount of the limitation tends to be determined by local assessment practices.

a. REPEAL OF CONSTITUTIONAL RESTRICTIONS ON LOCAL TAXING AND BORROWING POWERS

States' limitations on the taxing and borrowing powers of local governments should be confined to basic principles and relationships of enduring and basic importance. States are urged to repeal constitutional restrictions limiting local government property taxes and indebtedness by reference to the local base for property taxation. The following suggested constitutional amendment removes from the state constitution any details regarding local government taxing and borrowing powers and gives the legislatures authority to establish and revise local tax and debt policy through the normal legislative process.

Suggested Constitutional Amendment

Section 1. The legislature may pass laws regulating the taxing and borrowing powers of the [local governments] [political subdivisions] of the state.

Section 2. [All parts of the Constitution in conflict with this amendment are hereby repealed.] [Sections (identify those sections of Constitution to be repealed) are hereby repealed.]

Section 3. [Insert appropriate language, consistent with the referendum requirements for amending the Constitution and with state election laws, for submission of the proposed amendment to the electorate.]

b. AUTHORIZATION FOR LOCAL PROPERTY TAX LEVIES

Statutory provisions governing the imposition of property taxes by local governments should vest policy responsibility for fixing tax rates with the elected local governing boards. The strength of our federal form of government, as intended by the Constitution, depends in large measure on the vitality of local governments. These governments can remain responsive to the service needs of a dynamic population only if they possess the taxing powers essential for these tasks. Without the means to help themselves, they have no choice but to default on the needs of their citizens or seek financial aid from higher levels of government.

The following suggested legislation to vest responsibility for determining property tax rates with local governing boards is modeled after a portion of the *California Government Code* (Division 4, Art. 2., Secs. 43090 – 43096). It would require (a) the local legislative body to determine annually the amount of the property tax levy; (b) the property assessing authority to certify annually the assessed value of taxable property within the jurisdiction; and (c) the local legislative authority to fix the tax rate at a level sufficient to produce the amount of the tax levy necessary to cover operating costs and the debt obligations for the fiscal year.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize local property tax levies."]

(Be it enacted, etc.)

Section 1. Purpose. It is the purpose of this act to enable local governments to levy property taxes.

Section 2. Determination of Amount to be Raised from Property Taxes. The local legislative body shall meet annually on [insert date], and by ordinance fix the amount of money necessary to be raised by taxation upon the taxable property in its jurisdiction, as revenue to operate the various departments and agencies of the local government and to pay its indebtedness for the current fiscal year.

Section 3. Determination of Taxable Property Value. Annually on or before [insert date], the [insert title of assessor] shall transmit to the legislative body of each local government a written statement showing the taxable value of all property within the jurisdiction of the local government. The value shall be ascertained from the [assessment records] for the year, as equalized and corrected by the [property tax review agency.]

Section 4. Determination of Property Tax Rate. On [insert date], the local legislative body shall fix the tax rate, designating the number of [mills] [cents upon each hundred dollars ($100)], using as a basis the value of property as shown in the written statement furnished under section 3.

Section 5. Sufficiency of Property Tax Rate. The tax rate shall be sufficient to raise the amount fixed by the legislative body pursuant to section 2.

Section 6. Separability. [Insert separability clause.]

Section 7. Effective Date. [Insert effective date.]

c. AUTHORIZATION FOR LOCAL GOVERNMENT BORROWING

The intended application of state legislative provisions with regard to local borrowing should be made explicit and designed to facilitate rather than hamper intelligent choice among suitable alternative forms of borrowing by local governments. This objective is more likely to be realized if limitations imposed upon the borrowing power of an individual local government apply uniformly to all types of long-term debt (subject only to specifically defined exceptions).

Statutes regarding local borrowing powers, while providing the usual safeguards as to the purposes for which bonds may be issued, maturity schedules, interest rates, and the like should also:[1]

1. Allow maximum flexibility for local government borrowing with any governing state provisions being as comprehensive and uniform in character as possible; and

2. Vest authority to incur debt with the governing bodies of local governments, subject only to a permissive referendum if petitioned by the voters and resolved generally by a simple majority vote.

Tennessee statutorily authorizes counties to issue bonds for the construction of certain public works without limitation, but subject to permissive referendum. The following suggested legislation is based on the Tennessee law (*Code,* Secs. 5-1103 – 5-1125).

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize local governments to issue debt."]

(Be it enacted, etc.)

Section 1. Definitions. As used in this act:

(1) "Bond" means a bond, note, or other evidence of indebtedness.

(2) "Local government" means a county, city, school district, [township, special district, or borough].

Section 2. Debt-incurring Power. Every [local government] [political subdivision] may contract debts for the construction and acquisition of public buildings and facilities and for the acquisition of land [states may wish to specify additional purposes for which local governments may contract debts], issue its bonds, notes, or other evidence of indebtedness to finance such activities, and provide for the rights of the holders of these obligations and to secure these obligations.

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[1] The National Municipal League has issued a *Model Municipal Bond Law* (New York: 1962) which covers the basic elements for state legislation on local borrowing powers. It includes the standard kind of debt limitation (as a percentage of assessed valuation), although in the introduction (p. viii) the League expressed reservations concerning this type of debt limitation.

Section 3. Initial Bond Resolution. Before any bonds are issued under this act, the local legislative body shall adopt a resolution which shall state in substance: (1) the amount or maximum amount of bonds to be issued; (2) the purpose or purposes for which the bonds are to be issued; (3) the rate or maximum rate of interest which the bonds are to bear; (4) a brief statement of whether the bonds will be payable from ad valorem taxed levied upon all taxable property in the local jurisdiction, or if from some other source, the source from which the bonds will be payable. [Insert appropriate language concerning publication and/or posting of the resolution notice.]

Section 4. Petition Protesting Issuance of Bonds. No vote of the qualified electors upon a proposition for the issuance of bonds by any local government under this act shall be necessary if the initial resolution is adopted by a majority of the members of the governing body of the local government, unless within [30] days from the date of publication or posting, as the case may be, of the initial resolution so adopted, a petition protesting the issuance of the bonds signed by at least [   ] percent of the qualified electors of the jurisdiction shall have been filed with [insert title of official with whom such petitions are filed]. If the petition shall have been filed with the [   ] within [30] days from the publication or the posting, as the case may be, of the initial resolution, no bonds shall be issued under this act without the assent of a majority of qualified electors who vote upon a proposition for the issuance of the bonds in the manner provided by sections 5 and 6 of this act. For the purpose of this act, a qualified elector shall be any resident or citizen of the local jurisdiction who was qualified to vote for members of the [state legislature] at the general election next preceding the filing of such petition, or who, on the date of the filing of such petition, is qualified to vote for members of the [state legislature]. No qualified elector shall be permitted to withdraw his signature from such a petition after signing the petition.

Section 5. Election Resolution. If it is necessary to hold an election on the proposition to issue the bonds pursuant to section 4 of this act, such election shall be called by the [local legislative body] which shall adopt a resolution (herein called the "election resolution") which shall supersede by its adoption the initial resolution and shall state in substance: (1) the amount or maximum amount of bonds to be issued; (2) the purpose or purposes stated in general terms for which the bonds are to be issued; (3) the rate or maximum rate of interest which the bonds are to bear; (4) a brief statement of the fact whether the bonds will be payable (i) from all local revenue, from whatever source derived, (ii) from ad valorem taxes levied upon all the taxable property in the local jurisdiction, or (iii) exclusively from the revenues of the facility; and (5) the date on which the election will be held. The election resolution shall be published in full at least once, not less than [30] days nor more than

[60] days prior to the date fixed for the election, in a newspaper published in the local jurisdiction or, if there be no such newspaper, the election resolution shall be placed in [5] conspicuous places within the jurisdiction of the local government, not less than [30] days nor more than [60] days prior to the date fixed for the election, and no other notice thereof need be published or given.

Section 6. Conduct of Election. Except as herein otherwise provided, and as far as may be reasonable, the manner of conducting the election, keeping the poll lists, counting and canvassing the votes, certifying the returns, declaring the results, and doing all acts relating to the election shall conform to the mode or method of procedure provided by law for the qualification of voters and the holding of a general election.

Section 7. Limitation on Election Contests. No suit, action or other proceeding contesting the validity of the bond election shall be entertained in any of the courts of this state, unless the suit, action, or other proceedings is commenced within [10] days from the date of the canvassing of the returns and the determination and declaration of the results thereof.

Section 8. Waiting Period for New Election. If an election on the proposition to issue bonds is had pursuant to section 4 of this act and a majority of the electors voting on the proposition do not vote in favor of the issuance of the bonds in question, the proposition shall not again be the subject of the initial resolution until [three] months have expired from the date of such election.

Section 9. Separability. [Insert separability clause.]

Section 10. Effective Date. [Insert effective date.]

d. RELIEF FROM TAX LIMITATIONS BY HOME RULE OR BY REFERENDUM

This legislation will be of interest only in states where local property tax rates are limited by constitutional or statutory provisions.

Home rule properly embraces the responsibility for financing local government services, including the obligation to determine locally the degree of responsibility delegated to the elected officials and the limitations imposed on their taxing powers. It follows that wherever local governments have been granted home rule powers, their right of self-determination implicit in such a grant should not be abridged by saddling them with statewide property tax limitations.

A property tax limitation law, however well conceived, cannot possibly allow for all the differences that exist among governments – even governments of the same type in the same state. Furthermore, the governing body of a community should always have recourse to its electorate if, as a result of demands made upon it by its constituents, it finds it necessary to exceed statutory limitations. Section 2 provides for a local referendum on the question of exceeding tax rates imposed by law. An alternative section 2 is offered that would allow approval of excess levies by the state tax agency.

33-21-00

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act Amending the Property Tax Law to Ease Limitations on Tax Rates."]

(Be it enacted, etc.)

Section 1. Any municipal corporation or county which provides by its charter for a limitation on the tax rate which may be levied without a vote of the people for all municipal or county purposes may fix the tax rate at any amount within the limits thus provided, without regard to any limitation on the tax rate prescribed by general law.

Section 2. The local governing body of any unit of local government authorized to impose property taxes may exceed the limitation on the tax rates imposed by law by an amount not to exceed [ ] percent as determined by the voters qualified to vote in county elections and residing in such unit.

Section 3. Separability. [Insert separability clause.]

Section 4. Effective Date. [Insert effective date.]

ADMINISTRATIVE APPROVAL OF EXCESS LEVY

Some states may want to approach the easing of local tax limitations through state administrative action rather than through a referendum. The following alternative language for section 2 provides such a procedure.

Section 2. The local governing body of any unit of local government authorized to impose property taxes may exceed the limitation on the rates imposed by law by an amount not to exceed [ ] percent if the proposal to levy the excess rate is submitted in writing and approved by the [state tax agency]. The [state tax agency] may approve a proposed excess levy only after a hearing and upon a showing that the increase is necessary to the proper administration of the affairs of the taxing unit requesting authority to impose an excess levy.

33-22-00

COLLECTION OF LOCAL NON-PROPERTY TAXES BY THE STATE

Over the past few years an increasing number of states have authorized local governments to levy non-property taxes as a means of securing additional revenues. Today many cities, counties, and even school districts levy the same kinds of taxes that are levied by the state. In order to levy such taxes, local governments typically have set up tax collection machinery which creates added administrative costs and increases the cost of tax compliance to the tax-paying public, while at the same time the effectiveness of local tax collection is hampered because of the limited local funds available for tax administration.

In the sales tax field, states such as California, Illinois, Mississippi, New Mexico, and Utah have, for some time, authorized a state agency to collect locally levied sales taxes. In addition to sales taxes, a number of states permit local governments to levy taxes on income, gasoline, alcoholic beverages, cigarettes and tobacco, amusements, motor vehicles, and others. During 1963, Colorado enacted broad legislation which would permit a state agency to collect any non-property tax for a local government where the state and local government levy the same tax.

The suggested legislation below is based on the Colorado statute. It should clearly be noted that this legislation does not in any sense constitute an authorization for local government to levy non-property taxes. It merely provides for a procedure where the state, on a reimbursable basis, can collect local government non-property taxes where such taxes are otherwise authorized by state law.

Suggested Legislation

[Title should conform to state requirements]

(Be it enacted, etc.)

Section 1. Authority to contract. The director of [tax department] is hereby authorized to negotiate and contract with any political subdivision of the state for the purpose of arranging for the collection by the [tax department] of any tax levied by a political subdivision of the state which is also levied and collected by the [tax department] for the state. Such agreements shall include a fee to be paid by the political subdivision to the [tax department] in such amount as may be necessary fully to cover the cost of collection of the local portion of the tax by the [tax department.] Pursuant to the agreement the director shall transmit to such political subdivisions on or before [date] all taxes so collected on behalf of such political subdivisions less the agreed upon collection fee.

33-23-00

STATE SUPPORT OF LOCAL TAX ENFORCEMENT

States can strengthen the finances of local governments by assisting them to collect taxes imposed at the local level. In some situations the state can condition issuance of state licenses and privileges upon compliance with and payment of local taxes. Local administration of personal property taxes on automobiles is measurably eased in states where evidence of their payment is made prerequisite to state registration of motor vehicles. Georgia provides this type of assistance to local tax administration. Similarly, states can condition state motor vehicle registration upon payment of the local motor vehicle registration fee.

The opportunities for state support in the collection of local taxes are particularly good with respect to those activities which are subject to licensing by the state. States usually require annual licenses for certain types of business and occupations. For example, alcoholic beverage wholesalers and retailers are generally required to obtain an annual license. The states could require an affidavit that local personal property taxes have been paid as a precondition to alcoholic beverage license renewal. States also require the payment of an annual renewal fee for corporations. As a precondition to the continued exercise of the corporate business, states could require an affidavit certifying that all local personal property and business license fees have been paid. A similar requirement could be made a precondition to the renewal of professional licenses.

While the scope for state support of local tax enforcement is broad, this suggested legislation is designed only to make the payment of local *ad valorem* and vehicle registration taxes a precondition of state motor vehicle registration.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to make payment of local taxes on motor vehicles a prerequisite to motor vehicle registration."]

(Be it enacted, etc.)

Section 1. No vehicle shall be registered and licensed by the [state motor vehicle licensing authority and its agents] unless a signed statement [tax receipt] accompanies the application certifying that all county and municipal taxes legally due by the applicant on the vehicle concerned have been paid.

Section 2. [Appropriate penalty provision or reference to a statutory citation providing a penalty for making a false statement on the tax return.]

33-48-00

STATE ASSISTANCE TO LOCAL DEBT MANAGEMENT

States have an inescapable interest in and concern with the quality of debt management practices of their local governments. Each community's practice is a matter of statewide concern because a blemish on its credit standing, perhaps on only a single bond issue, tends to affect the money market's judgment of other local bond issues in that state. It is appropriate and desirable therefore that state governments provide technical assistance in debt management to their cities, towns, counties, and other local units in forms and in extent appropriate for their particular circumstances.

Local governments, particularly small ones, are frequently penalized in the cost of their borrowing – the rate of interest they pay – because the official statements which announce their offer to sell bonds and invite underwriters' bids do not contain adequate economic, financial, and other information to permit the quality of their credit to be fully recognized. Potential buyers of local government bonds need to be able to appraise the borrowing jurisdiction's ability to meet its debt obligations in terms of comparable data, covering several recent years, on revenues by sources, tax rates and collection experience, expenditures by purposes, outstanding debt and debt service requirements, limitations on taxing and borrowing powers, etc. They need data to permit an appraisal of the jurisdiction's prospects for economic growth and development, and in the case of revenue bond offerings, require additional information bearing on the ability of the particular activity, say a water system, to support additional debt.

Smaller jurisdictions generally borrow infrequently and often do not have access, through their own financial staffs and locally available advisors, to the specialized techniques involved in preparing a debt offering "prospectus." Some do not even appreciate the importance attached by the bond market to a comprehensive official statement – that whenever some key item of information is omitted and is not readily available elsewhere, the bond market and the investor necessarily make the conservative assumption and resolve any doubt against the borrowing government. As a result, local governments in relatively strong economic and financial condition sometimes are obliged to sell their bonds on less favorable terms because germane information has not been provided.

The suggested act includes a provision (section 6) for regulating local borrowing without imposing a limitation based upon assessed value. It relies upon the operation of the security market by providing that a local bond offering may not be sold if the net interest cost represented by the bids that are submitted exceeds a specified range. To provide for extraordinary market conditions, the act permits the state regulatory agency to allow exceptions upon appeal from the local governments proposing a bond issue. A possible alternative to the appeal procedure in the suggested act might be to provide for suspension of the general interest cost limitation when the security market reaches a particularly low or a particularly high interest level, but to vest the state agency with veto power over local government bond awards. If this alternative were adopted, the burden of proof would be placed upon the state agency to justify any veto action.

The suggested act provides for state technical assistance and sets standards for official statements on local debt offerings by authorizing a designated state agency:

(1) To encourage, conduct or participate in training and educational programs on debt management procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, professional organizations, university faculties and other specialists.

(2) To maintain a central file of debt and related data for all local governments to provide ready access to official data, on a comparable basis for the benefit of security underwriters, investors, security analysts, and interested citizens. In addition to information on outstanding debt, data could be maintained currently also on bond elections and security offerings planned for the fiscal year. The ready availability of this

information would benefit local governments by insuring that those evaluating their obligations had access to information on their fiscal situation.

(3) To advise a local government on procedures for improving its debt management, when it appears that its borrowing practices, with respect to method of financing, size of the issue, maturity schedule, coupon rate structure, timing of sale, advertising, etc., do not accord with the local unit's own financial self-interest.

(4) To handle the marketing of the security offerings of local units on a request basis. Communities with infrequent recourse to the money markets can in this way be given access to highly specialized skills involved in preparing a bond issue for sale and timing it so as to secure for it the best terms available in a continually changing money market. This procedure also permits the pooling of the bond offerings of several local jurisdictions, thereby expanding the likely participation of large national firms in the bidding for the issue.

(5) To prevent local governments from marketing their security offerings at an excessive net interest cost.

(6) To regulate the content of official statements on local debt offerings through the provision of appropriate guidelines and specifications.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to provide state assistance and regulation regarding local government debt offerings."]

(Be it enacted, etc.)

TITLE I

TECHNICAL AND ADVISORY ASSISTANCE

Section 1. Purpose. It is the intent of this title to facilitate, through state technical and advisory assistance, the marketing of local government bonds and other long-term obligations at the lowest possible net interest cost.

Section 2. Definitions. (a) "Local government" means a county, city, village, town, township, school district, and other special-purpose district, authority, or public corporation within the state and authorized by the state to issue bonds and other long-term obligations.

(b) "Governing body" means the body or board charged with exercising the legislative authority of a local government.

(c) "Agency" means [insert name of the appropriate agency of state government].[1]

(d) "Chief financial officer" means [the comptroller, treasurer, director or finance or other local government official charged with managing the fiscal affairs of a local government official charged with managing the fiscal affairs of a local government].

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[1] The agency charged with this function will vary from state to state. Normally it will be the agency, if any, that is charged generally with concern or oversight regarding local government debt or that provides general services or assistance to local governments or, in the absence of such agency the agency that is responsible for the marketing of the state's obligations.

(e) "Bonds" means debt payable more than one year after date of issue or incurrence, issued pursuant to the laws authorizing local government borrowing.

Section 3. Authorization of State Technical and Advisory Assistance. The [agency] is authorized and directed to provide technical and advisory assistance regarding the issuance of long-term debt to those local governments whose governing bodies request such assistance. Such assistance shall include, but need not be limited to: (1) advice on the marketing of bonds by local governments, (2) advisory review of proposed local government debt issues, including the rendering of opinions as to their legality, (3) conduct of training courses in debt management for local financial officers, and (4) promotion of the use by local government of such tools for sound financial management as adequate systems of budgeting, accounting, auditing, and reporting.

Section 4. Advisory Review of Proposed Local Government Debt Issues. At the request of the governing body of any local government, the [agency] is authorized to review a proposed debt issue and to render an advisory opinion based upon the facts concerning the proposed issue. Any request for an advisory review shall be submitted to the [agency] in such form and with such information as the [agency] may require.

Section 5. State Sale of Local Government Security Offerings. At the request of the governing body of any local government, the [agency] is authorized to market such local government's security offerings by preparing bond issues for sale, advertising for sealed bids, receiving bids at its offices, and making the award to the bidder that offers the most favorable terms. The [agency] may, at its discretion, offer for concurrent sale the bonds of several local governments. State sale of a local security offering under this section shall in no way imply state guarantee of such debt issue.

Section 6. Maximum Net Interest Cost of Local Government Bond Issues. (a) A local government shall not issue bonds at a net interest cost that exceeds [ ] times[1] the current yield rate of the highest grade bonds issued by local governments in this state during the month preceding the month in which sealed bids are opened. The [agency] on the last day of each month shall promulgate the average yield rate of the highest grade bonds issued by local governments in this state during the preceding month.

(b) A local government may file an appeal with the [agency] for an exception, and the [agency] may grant an exception if market conditions or considerations of general state policy warrant. In filing an appeal, the burden of proof is upon the local government as to the urgency of the project, the extent to which the request for bids was advertised, the nature of the bids submitted, the special market conditions obtaining at the time bids were received, and other information required by the [agency].

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[1] This figure should be set at such a level, say 1.4, as to forestall the payment of unreasonable interest rates by local governments.

Section 7. Powers and Duties of the [Agency]. The [agency] shall have the following powers and duties:

(1) To require such reports from local governments as will enable it adequately to provide the technical and advisory assistance authorized by this act and to perform the regulatory functions required by the act. The reports shall provide the necessary information for a complete file on local government debt, which shall be kept open for public inspection at [agency] offices.

(2) To encourage, conduct or participate in training courses in debt and general fiscal management and procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, business and professional organizations, university faculties, or other specialists.

(3) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids. The [agency] may employ expert consultants to assist in such studies.

(4) To employ or contract for the services of personnel necessary to carry out the provisions of this act, subject to the provisions of [statutory citation].

(5) All departments, divisions, boards, bureaus, commissions, or other agencies of the state government shall provide such assistance and information as, not inconsistent with law, the [agency] may require to enable it to carry out its duties under this act.

(6) To compile and publish annually a report on its technical assistance and advisory activities. Such report shall include detailed information on local government long-term debt issued and retired during the previous [calendar or fiscal] year and outstanding at the close of the previous [calendar or fiscal] year, and such additional statistical data on local government finances that are obtained by the [agency] pursuant to paragraph (1) of this section.

TITLE II

STANDARDS FOR OFFICIAL STATEMENTS ON LOCAL DEBT OFFERINGS

Section 1. Purpose. It is the intent of this title to facilitate the marketing of bonds by local governments by providing minimum standards as to the kinds of information to be included in advertising notices and sales prospectuses.

Section 2. Authorization. The [agency] shall prepare regulations concerning the minimum content of the notice of sale advertisements and prospectuses required by [statutory citation]. Regulations as to the content of such notices and prospectuses may make an appropriate differentiation among types of bond issues and types of local government.

Section 3. Notice of Sale Advertisement. The notice of sale advertisement shall set forth the purpose of the bond issue, principal amount of the bond issue, designation of type of bond issue according to the authorizing statute, date of issue, the method of bond repayment, showing the denominations and maturities offered for sale, the basis of bidding and award of the bonds, the date, hour, and place that bids will be opened, the name of the chief financial officer who will furnish additional information about the issuing local government or the bond sale, and any other appropriate information, in accordance with the regulations prepared by the [agency].

Section 4. Prospectus. The prospectus shall: (1) report the past, current, and estimates as to the future finances of the bond-issuing local government; (2) include selected information concerning the financial administration and organization of the bond-issuing local government; (3) contain selected information concerning the economic and social characteristics of the community in which the issuing local government is located, including such data as will permit investors and other interested parties to appraise the ability of the borrowing local government to assume the obligation; and (4) contain any other appropriate information, in accordance with the regulations prepared by the [agency].

Section 5. Inclusion of Additional Information. The chief financial officer may, at his discretion, include information in the notice of sale advertisement and in the prospectus in addition to that specified as the minimum content in regulations issued by the [agency].

Section 6. Bid Forms. The [agency] shall prepare and supply standard bid forms to be used by local governments in securing bids from prospective purchasers.

TITLE III

SEPARABILITY AND EFFECTIVE DATE

Section 1. Separability. [Insert separability clause.]

Section 2. Effective Date. [Insert effective date.]

33-50-00

INVESTMENT OF IDLE FUNDS

State and local governments in the United States are hard pressed to raise the revenues necessary to keep abreast of an ever broadening and intensifying demand for more governmental services arising from an increasing population and the quickening pace of technological change. It is possible, through a prudent yet vigorous program of investment of idle cash balances, to increase state and local governments' revenues appreciably without raising state or local taxes and without increasing other nontax charges upon the public. The Advisory Commission on Intergovernmental Relations, an intergovernmental body created by the Congress, has estimated that from $35 million to $100 million of additional annual revenue can be obtained through the placing of additional funds in interest-bearing accounts or investments.

Cash balances of local funds which are in excess of operating needs can either be put to work drawing interest and thereby producing additional revenue for the local government, or they may be allowed to lie idle. If the latter course is followed, a waste of public funds occurs, just as real as an unnecessary or overpriced procurement contract or an uncollected tax obligation. Although considerable improvement has been registered in recent years, the investment of otherwise idle balances constitutes a significant potential revenue source which still is sometimes overlooked completely and is frequently under-utilized. In a number of states, statutory authority for the investment of idle funds of counties, municipalities and other local units of government does not exist or is restrictive or unclear. To continue in effect state legislative restrictions which preclude the investment in a safe and prudent manner by local governments of otherwise idle funds is not only inconsistent with constructive state-local relations in general but deprives local units of government of much-needed revenue. To assist the local governments so affected, the Investment of Idle Funds Act has been developed.

It is the purpose of the suggested act to authorize the governing body of a municipality, county, school district or other local governmental unit or political subdivision to invest and reinvest its funds in certain interest-bearing obligations.

Some local governments fail to avail themselves of the opportunity to earn interest income because their officials, particularly in the smaller governmental units far removed from the financial centers, are not sufficiently familiar with the opportunities and mechanics for investing governmental funds for short periods. Their officials often perform a combination of different functions which in the larger jurisdictions are shared by a number of officials. Some of them are understandably reluctant to invest government funds in their custody in investment media with which they are unfamiliar.

Since many state governments regularly invest their free balances in short-term obligations, their officials possess technical expertness in this activity. It is urged that states consider authorizing and directing their appropriate officials to share their specialized knowledge in the investment of short-term public funds with the appropriate financial officials of the smaller subdivisions. The suggested act provides for such state technical assistance to local governments.

Many of the states provide for regular investment of their own surplus funds, even allowing the transfer of funds from special accounts so that they can be pooled for short-term investment purposes. It is suggested that states consider the possibility of extending their investment facilities to those local governments that elect to participate to pool their funds for short-term investment. The additional funds thus made available to the state investment pool would make for greater flexibility in the state's use of the various short-term investment opportunities available to it. A Montana statute authorizes this type of activity on the part of the state government (Mont. R.C. 79-1202).

The question of how far to go in the type of investments authorized is a matter of judgement which will vary from state to state. At the very least, as provided in section 1 of the suggested act, authority is provided for the placement of idle funds in (a) obligations of the United States and of its agencies and instrumentalities; (b) bonds or certificates of indebtedness of the state concerned and of its agencies and instrumentalities; and (c) shares of any building and loan association insured by the government of the United States or any agency thereof, up to the amount so insured. Particular states may wish to authorize additional types of investment, such as the securities of the local unit of government concerned, the securities of other states, or of municipalities or other local governments within the state, or other types of securities that meet appropriate tests of liquidity and security.

Section 1 provides further that the provisions of the act shall not impair the power of a local unit of government to hold funds in deposit accounts with banking institutions as otherwise authorized by law. In other words, the terms of the suggested act are designed to avoid conflict with other statutory provisions governing the placing of funds with banking institutions.

Section 2 of the suggested act authorizes the governing body of the local unit of government concerned to delegate the investing authority provided by Section 1 to the treasurer or other financial officer charged with the custody of the funds of the local government.

Section 3 of the suggested act authorizes the state official or agency responsible for investing state funds to provide technical assistance to local governments in investing their temporarily idle funds.

Sections 4 through 11 establish the Pooled Investment Fund and provide for its administration.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. (a) The governing body of a municipality, county, school district, or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:

(1) Obligations of the United States and of its agencies and instrumentalities;

(2) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;

(3) Shares of any building and loan association insured by an agency of the government of the United States up to the amount so insured;

(4) The Pooled Investment Fund established by this act;

(5) [ ];[1]

(b) The provisions of this act shall not impair the power of a municipality, county, school district or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

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[1] Individual states may wish to augment the list of authorized investments set forth in this section.

Section 2. The governing body may delegate the investment authority provided by section 1 of this act to the treasurer or other financial officer charged with custody of the funds of the local government, who shall thereafter assume full responsibility for such investment transactions until the delegation of authority terminates or is revoked.

Section 3. The state [insert title of the state official or agency responsible for investing state funds] is authorized and directed to assist local governments in investing funds that are temporarily in excess of operating needs by:

(1) explaining investment opportunities to such local governments through publication and other appropriate means;

(2) acquainting such local governments with the state's practice and experience in investing short-term funds; and

(3) providing technical assistance in investment of idle funds to local governments that request such assistance.

Section 4. There is hereby established the Pooled Investment Fund for the purpose of receiving and investing any money in the custody of any officer or officers of the state or any governing body of any [municipal corporation, county, school district, special tax district, or other political subdivision] designated or permitted by statute to be invested.

Section 5. The state [insert title of the state official or agency responsible for investment of state funds] shall administer the Pooled Investment Fund on behalf of the participants.

Section 6. The state [insert title of the state official or agency responsible for investment of state funds] shall invest monies in the Pooled Investment Fund with that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Section 7. All investments purchased belong jointly to the participants in the fund and the participants will share capital gains, income, and losses pro rata.

Section 8. The state [insert title of state official or agency responsible for investment of state funds] shall keep a separate account, designated by name and number of each participant. Individual transactions and totals of all investments belonging to each participant shall be recorded in the accounts.

Section 9. The state [insert title of the state official or agency responsible for investment of state funds] shall report monthly to every participant having a beneficial interest in the Pooled Investment

Fund. The report shall show the changes in investments made during the preceding month. The state [insert title of the state official or agency responsible for investment of state funds] shall furnish upon request the details of an investment transaction to any participant.

***Section 10.* (a) The principal and any part thereof, of each and every account constituting the Pooled Investment Fund shall be subject to payment at any time from the monies in the fund.**

(b) An order or warrant may not be issued upon any account for a larger amount than the sum total of the particular account to which it applies, and if such order or warrant is issued, the [state official responsible for the investment of state funds] shall be personally liable under his official bond for the entire overdraft resulting from the payment if made.

***Section 11.* There is hereby appropriated from general funds the sum of [$] to establish a revolving account under the custody of the state [insert title of the state official or agency responsible for investment of state funds] to defray administrative cost of the Pooled Investment Fund. The state [insert title of state official or agency responsible for investment of state funds] may deduct from each participant's pro rata earnings through the fund a reasonable charge for administering the fund, which shall be deposited and expended through the revolving account.**

***Section 12. Effective Date.* [Insert effective date.]**

34-20-00

STATE FINANCIAL ASSISTANCE AND CHANNELIZATION OF FEDERAL GRANT PROGRAMS FOR URBAN DEVELOPMENT

A generally accepted characteristic of our federal system of government in the United States is the sharing of responsibilities among the three levels of government – federal, state, and local. This is especially true in meeting problems of urban growth and development. The states as well as the federal and local governments have a vital stake and responsibility in this area.

Since World War II, the growth of direct relationships between the federal government and cities, counties, and other units of local government has been of increasing concern to state governors and legislatures. The tendency of federal agencies and of local governments to "by-pass" the states has been deplored. On the other hand, the Congress and local governments, especially the larger cities, have contended that inaction on the part of state government should not be permitted to deprive a local government of federal aid if the grant application met all requirements set forth in the federal statute.

Gradually, at both state and federal levels considerable agreement has been developing to the effect that if a state government desires to assert fully its responsibilities in a federally aided field of local activity with funds and administrative machinery, then the relationship should be primarily federal-state in character. On the other hand, it is widely agreed that if the state chooses to remain aloof from the problem toward which the federal aid is directed then local units of government should be free to participate in the federal program and to deal directly with the federal agencies concerned. This policy was first spelled out in the Federal Airport Act of 1946:

In the meantime, many problems of local government in urban areas become more acute and state leadership and concern are called for increasingly. As the Council of State Governments has pointed out in its publication, *State Responsibility in Urban Regional Development,*

> **State government possesses singular qualifications to make profound and constructive contributions to urban regional development practice. The state is in fact an established regional form of government. It has ample powers and financial resources to move broadly on several fronts. Far-ranging state highway, recreation and water resources development programs, to name a few, have had and will continue to have great impact on the development of urban and regional areas. Moreover, the state occupies a unique vantage point, broad enough to allow it to view details of development within its boundaries as part of an interrelated system, yet close enough to enable it to treat urban regional problems individually and at first hand.[1]**

The Advisory Commission on Intergovernmental Relations has recommended "that the states assume their proper responsibilities for assisting and facilitating urban development; to this end it is recommended that federal grants-in-aid to local governments for urban development be channeled through the states in cases where a state (a) provides appropriate administrative machinery to carry out relevant responsibilities, and (b) provides significant financial contributions and, when appropriate, technical assistance to the local

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[2] *State Responsibility in Urban Regional Development: A Report to the Governor's Conference* (Chicago: The Council of State Governments, 1962), pp. 17-18.

governments concerned."[2]

State legislation to carry out these responsibilities for urban development should establish appropriate administrative machinery and technical assistance programs, as well as financial assistance for local urban development activities. Financial contributions should be significant and not token; they might appropriately be between 20 to 50 percent of the nonfederal share of urban development programs. These two contributions – namely (a) the creation of suitable state administrative machinery and (b) state financial assistance – would give the states a meaningful and effective role in urban affairs. State appropriations should be sufficient to match the availability of federal grants so as to assure that state involvement does not act to reduce the eligibility of localities for federal aid.

The following legislation would (1) authorize state financial and other assistance to localities for specified purposes, (2) designate appropriate state administrative machinery to carry out the states' urban development responsibilities, and (3) provide that where the foregoing conditions are met with respect to any federal aid program, all funds and relationships with respect to such program would flow through the state except as might be provided otherwise for purposes of administrative convenience by the state agency concerned.

In other words, the proposed legislation provides a framework within which states can "buy into" present programs of federal aid to localities, assuming concurrently with such action, policy control, coordinative and other aspects of the usual state-local relationships. (This concept accords with customary state practice in that state prescriptions governing federally aided local programs generally stem from a legislative desire to safeguard the expenditure of state funds.) In this manner, the state becomes able to exercise its influence with regard to the scope and type of projects undertaken and to assure the coordination of such projects with other aspects of overall state policy.

Programs which might benefit from state financial and technical assistance and from state coordination include urban planning assistance, area redevelopment, urban renewal, open space, the planning and construction of hospitals, waste treatment works, public housing, and airports. Appropriate portions of the following suggested legislation could be enacted to supplement existing or new legislation in any of these program areas, or other areas deemed appropriate by the legislatures.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Programs Authorized. The legislature finds that the federal government has established and continues to establish grant programs of direct assistance to the local governments of the state, and that, due to the large number of local governments in the urban areas of the state and the lack of coincidence of service needs and tax jurisdictions, it frequently is difficult for local government to marshal the technical and financial resources needed to meet the needs of its residents. For the state to assume its

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[2] Advisory Commission on Intergovernmental Relations, *Impact of Federal Urban Development Programs on Local Government Organization and Planning* (Washington: U.S. Government Printing Office, 1964), p. 30.

its proper responsibility and leadership in meeting the needs of its urban residents, the declared policy of the state is to render technical assistance, contribute to the nonfederal share of the cost of the following federally aided programs, and to assume responsibility for coordinating relationships between local governments and federal agencies with regard to such programs.[1]

(a) *Open Space.* Open-space grants made in accordance with this act shall be for the purpose of helping to curb urban sprawl, preventing the spread of urban blight and deterioration, encouraging more economic and desirable urban development, and providing necessary recreational, conservation, and scenic areas. The [appropriate state agency] shall administer such grants.[2] State grants shall be [50] percent of the nonfederal share of the individual project costs.

(b) *Urban Planning.* Urban planning grants made pursuant to this act shall be for the purpose of helping local governments to solve planning problems resulting from the increasing concentration of population in urban areas, including small communities as well as large, on a continuing and coordinated basis, and to encourage the establishment and improvement of local planning staffs. The [appropriate state agency] shall administer such grants. State grants shall be [50] percent of the nonfederal share of the individual project costs.

(c) *Urban Renewal.* Urban renewal grants given in accordance with this act shall be for the purpose of helping to eliminate urban blight and to renew obsolete patterns of urban development. The [appropriate state agency] shall administer such grants. State grants shall be [50] percent of the nonfederal share of the individual project costs.

(d) *Public Housing.* Public housing grants given in accordance with this act shall have the purpose of helping families having financial need to be accommodated in safe and sanitary housing in a suitable living environment. The [appropriate state agency] shall administer such grants. State grants shall be [50] percent of the nonfederal share of the individual project costs.

(e) *Airport Development.* The safe and efficient movement of air traffic depends upon the adequacy of each airport and of the airport system. Airport development grants made in accordance with this act shall be for the purpose of planning, constructing, and developing airports important to the continued growth and safety of air commerce within the state. The [appropriate state agency] shall administer such grants. State grants shall be [50] percent of the nonfederal share of the individual project costs.

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[1] The enumerated programs below are merely suggestions. They may be added to, subtracted from, or modified to suit the needs of individual states.

[2] If no appropriate state agency exists for purposes of certain grants listed in this section of the act, an additional section should be added to establish the necessary agency or agencies. Alternatively this responsibility can be assigned to a state agency or department for local affairs and community development.

(f) *Hospital and Medical Facility Construction.* Hospital and medical facility construction grants made in accordance with this act shall be for the purposes of helping local governments plan for and assist in assuring adequate hospital and other medical facilities. The [appropriate state agency] shall administer such grants. State grants shall be [50] percent of the nonfederal share of the individual project costs.

(g) *Waste Treatment Works.* Grants for waste treatment works made in accordance with this act shall be for the purpose of preventing and controlling water pollution by means of planning and providing works for the collection and treatment of sewage. The [appropriate state agency] shall administer such grants. State grants shall be [50] percent of the nonfederal share of the individual project costs.

Section 2. Relationship with Federal Agencies. (a) Any application for federal grants for a purpose or program designated in section 1 shall be submitted to the state agency designated in section 1 as responsible for the state program in the field concerned. The head of such state agency shall approve or disapprove state grants to be applied to the nonfederal share of project costs consistent with the purposes of section 1. An approval may be conditioned upon subsequent approval of the project by an appropriate federal agency for federal grant funds. Upon approval of an application, the director of the appropriate state agency shall transmit it to the appropriate federal agency. Any application disapproved by the director of the appropriate state agency shall be returned to the applicant with written notice of the modifications necessary to make the project eligible, in terms of state or federal policy and law.

(b) The heads of state agencies may provide by administrative regulation the procedures by which negotiations and other relationships between local units of government and federal agencies are conducted with respect to programs designated in section 1.

Section 3. Technical Assistance and Administration. Heads of the state agencies designated in section 1 shall establish appropriate technical, administrative, coordinative, and other measures relating to project sponsors within the state eligible for federal grants in order to facilitate their participation in the program established by this act. They shall establish, with the approval of the governor, necessary rules and regulations to carry out their responsibilities under this act.

Section 4. Separability. [Insert separability clause.]

Section 5. Effective Date. [Insert effective date.]

34-30-00

PRIVATE ENTERPRISE INVOLVEMENT IN URBAN AFFAIRS

During the past few years, both the Congress and the Federal Executive Branch have given consideration to methods through which the Federal Government and private enterprise could work together more effectively in meeting the crises in the Nation's cities. This concern was prompted by the growing realization that no one level of government – nor even all levels of government working in concert – could cope adequately with the manifold problems confronting local governments in our metropolitan areas; deep involvement of the private sector is required.

Many proposals have been advanced which call for a partnership between the public and private sectors in the rebuilding of the Nation's cities. For example, the use of rent supplements has been advocated as an alternative to public housing in meeting the problem of adequate shelter for low-income families.

Most of the recommendations under consideration focus upon Federal-private cooperation, and largely ignore the arrangements that State and local governments could develop in this area. However, government at all levels must assume increasing responsibilities in combating poverty, crime, unemployment and underemployment, delinquency, inadequate educational facilities, and poor housing accommodations in metropolitan areas. Remedial measures are most urgently needed in the central cities of industrial or highly urbanized States.

State constitutions and statutes should be examined to identify and evaluate restrictions upon public-private cooperation. Unless compelling reasons to the contrary are evident, States should remove existing barriers to the involvement of private enterprise in efforts directed toward enlarging and revitalizing the economic and fiscal base of their major cities. After this step has been taken, States should continue to encourage the private sector to use its resources to ameliorate urban problems.

Many potentialities exist for State-local-private cooperation which could be authorized by State constitutional or statutory action. For example, a number of State constitutions contain provisions prohibiting the use of the State's credit in private undertakings; such restrictions could be removed. State and local tax policies could also be reviewed to determine whether they encourage or discourage replacement of obsolete structures, proper maintenance of living quarters, and general rehabilitation and improvement of neighborhoods. These policies are particularly significant because of their impact upon land use and subdivision development in urban areas.

A new constitution proposed by the New York State Constitutional Convention in 1967 contained a provision permitting the State to participate with the private sector in economic and community development. The following constitutional amendment, which is based upon the New York proposal, is offered as a means of facilitating general cooperative efforts between State and local public agencies and private enterprise.

Suggested Constitutional Provision

[Title, format, and procedural practice for constitutional amendment should conform to State practice and requirements.]

Notwithstanding any other provision of this constitution, the state, its political subdivisions, and any public corporation may, as provided by law, where a public purpose will be served, grant or lend its funds to any individual, association, or private corporation for purposes of participating or assisting in economic and community development.

STATE LOANS TO INDUSTRY TO PROMOTE URBAN GROWTH POLICIES[1]

In order to attract business and industrial firms, many states have established industrial finance authorities. In the main, these authorities operate everywhere in the state without regard to whether economic development in some areas is necessary or desirable. This proposal is intended to focus the efforts of state financing authorities on areas designated by state's urbanization plans and policies as places where urban growth should be encouraged.

In some areas designated for urban growth, firms will be discouraged by a shortage of loan funds and by inability to meet going interest rates. State industrial credit financing can offset the market constraints felt by private lenders by guaranteeing industrial loans or making direct loans to responsible private entrepreneurs.

Both the loan guarantee and the direct loan programs utilize the appropriated and borrowed funds of a public corporation vested with financing authority by the state legislature. Where private capital is difficult to obtain, the state steps in to help finance the location of industry. It is particularly urgent to provide this type financing to attract small enterprises to urban growth areas.

In some cases, urban growth areas may extend across state lines. Common interests might indicate a need for states to pool their separate industrial financing capabilities in such cases. The suggested legislation which follows allows this flexibility.

The fact should be noted that some states may encounter constitutional prohibitions against lending the State's credit to private undertakings. Language for a constitutional amendment to permit a State to use its resources to encourage private enterprise involvement in urban growth appears elsewhere in this volume. Alternatively, the legislation can include a comprehensive statement of findings, to establish the public purpose of such an activity.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to facilitate industrial development in accordance with state urban growth policies.]

(Be it enacted, etc.)

Section 1. Short Title. This act shall be known as the "Urban Industrial Development Financing Act."

Section 2. Declaration of policy.[2] In order to promote the health, safety, right to gainful employment, business opportunity and general welfare of the inhabitants of this state, there is created the state urban development corporation, which shall exist and operate for the public purpose of encouraging urban growth by the promotion and development of industrial and manufacturing enterprises in those areas of the state in which conditions for urban growth are most desirable and necessary. Such purposes are hereby declared to be public purposes for which public money may be spent.

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[1] This draft bill incorporates one of several approaches set forth in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth*, as measures for the States to consider in implementing policies for urban growth and new community development.

[2] States may find it necessary to set forth a statement of findings and declaration of public purposes in order to sustain the constitutionality of this legislation unless they have a constitutional provision such as that provided elsewhere in the Commission's State Legislative Program, allowing public financial support for private enterprise involvement in urban development.

Section 3. Definitions. The following terms, whenever used or referred to in this act, shall have the following meanings, except in those instances where the context clearly indicates otherwise.

(1) "Corporation" means the state urban industrial development corporation created by this act.

(2) "Urban growth area" means the area encompassing any municipality or group of municipalities, county, group of counties or region of the state defined by the corporation as suited for urbanization in accordance with the state urbanization plans and policies.

(3) "Industrial development agency" means any incorporated organization, foundation, association or agency, to whose members or shareholders no profit shall inure and which shall have as its primary function the promotion, encouragement and development of industrial and manufacturing enterprises in an urban growth area.

(4) "Urban Industrial Development Fund" means the account created by this act.

(5) "Industrial development project" means any site, structure, facility, or undertaking comprising or being connected with or being a part of an industrial or manufacturing enterprise established or to be established in an urban area.

(6) "Responsible buyer" means any person, partnership, firm, company or corporation organized for profit and deemed by the corporation, after proper investigation, to be financially responsible to assume all obligations prescribed by the corporation in the acquisition of an industrial development project and in the operation of an industrial or manufacturing enterprise therein or thereon.

(7) "Responsible tenant" means any person, partnership, firm, company, or corporation organized for profit, deemed by the corporation, after proper investigation, to be financially responsible to assume all rental and all other obligations prescribed by the corporation in the leasing of an industrial development project and in the operation of an industrial or manufacturing enterprise therein or thereon.

(8) "Cost of establishing an industrial development project" means so much as necessary of the following: the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for construction, interest prior to and during construction, cost of engineering and legal expense, plans, specifications, surveys, estimates of costs and other expenses necessary or incident to determining the feasibility or practicability of any industrial development project; together with such other expenses as may be necessary or incident to the financing

and the construction of the industrial development project and the placing it in operation. The cost of all machinery and equipment and its installation and maintenance, except for building service equipment, shall not be included in the cost of establishing an industrial development project, but shall be provided by the responsible tenant or responsible buyer.

Section 4. State Urban Industrial Development Corporation.

(a) *Corporation created; Membership.* The state urban industrial development corporation is hereby created. The corporation shall be a corporate governmental agency of the state. Its membership shall consist of [nine] directors as follows:[1] [insert titles of state officials to serve ex officio], and [five] directors to be appointed by the governor with the advice and consent of the Senate. [Provide for length of term and succession].

(b) *Officers.* From among the directors appointed by him, the governor shall appoint the chairman of the corporation, who shall its chief executive officer. The directors, except for the chairman, shall serve without salary, but each director shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties, and, except in the case of [state officials serving ex officio], a per diem allowance of [one hundred] dollars when rendering services as director, provided that the aggregate of such per diem allowance to any one director in any one fiscal year shall not exceed the sum of [five thousand] dollars. The chairman of the corporation shall receive for his services a salary fixed by the directors.

(c) *Other Public Office or Employment not Prohibited.* No officer or employee of the state or any civil division thereof shall be deemed to have forfeited his office or employment by reason of his acceptance of membership on the corporation.[2] A director who holds such other public office or employment shall receive no additional compensation or allowance for services rendered pursuant to this act, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

(d) *Removal of Directors.* The governor may remove any director appointed by him for inefficiency, neglect of duty, or misconduct in office after giving the director a copy of the charges against him and an opportunity to be heard, in person or by counsel, in his defense, upon not less than ten days' notice. If any such director shall be removed, the governor shall file in the office of the [secretary of state[a complete statement of charges made against such director and his findings thereon, together with a complete record of the proceeding.

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[1] Titles and assigned responsibilities vary from state to state, so careful consideration needs to be given to ex officio members.

[2] Dual office holding is prohibited by some state constitutions.

(e) *Continuation of Corporate Existence.* The corporation and its corporate existence shall continue until terminated by law, but no such law shall take effect so long as the corporation shall have bonds, notes and other obligations outstanding, unless adequate provision has been made for the payment thereof.

(f) *Quorum.* A majority of the directors of the corporation shall constitute a quorum for the transaction of any business or the exercise of any power or function of the corporation.

Section 5. Powers of the corporation. The corporation shall have power to:

(1) sue and be sued;

(2) have a seal and alter it at pleasure;

(3) make and execute contracts and all other instruments necessary or convenient for the exercise of the powers and functions granted it under this act;

(4) make and alter by-laws for its organization and internal management;

(5) appoint officers, agents and employees, prescribe their duties and fix their compensation;

(6) cooperate with industrial development agencies in their efforts to promote the expansion of industrial and manufacturing activity in urban growth areas;

(7) make, upon proper application by responsible buyers, as prescribed by the corporation, loans of moneys held in the urban development fund in urban growth areas and to provide for the repayment and redeposit of such loans;

(8) Guarantee loan repayments to a lending institution that has provided the funding for an industrial development project, not to exceed [eighty] percent of the amount of the loan.

(9) To prescribe standards by which applications for loans or loan guarantees for industrial development projects will be judged, but such standards shall not be inconsistent with the purposes of this act. One such standard shall be that an application shall show evidence that the establishment of the industrial development project will not cause the removal of an industrial or manufacturing plant or facility from one area of the state to another area of the state.

(10) purchase, acquire and take assignment of notes, mortgages, and other forms of security and evidences of indebtedness, attach, seize, accept, or take title by conveyance, foreclose, sell, lease, or rent, and otherwise deal with property, in a manner that protects the interests of the corporation therein;

(11) subject to specific authorizations as may be provided by law, borrow money and issue its negotiable bonds and notes and provide for the rights of the holders thereof.

(12) invest any funds held in reserve or in sinking funds and any monies not required for immediate use or disbursement, in obligations of the state or of the United States government, or obligations the principal and interest of which are guaranteed by the state or the United States government.

(13) procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable.

(14) contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from any other source, if the terms and conditions thereof are not in conflict with this act;

(15) do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this act.

Section 6. Loans to responsible buyers. When it has been determined by the corporation, upon application and hearing thereon, that the establishment of a particular industrial development project of responsible buyers in an urban growth area has accomplished or will accomplish the public purposes of this act, the corporation may contract to lend the responsible buyer an amount not in excess of [30%] of the cost or estimated cost of the industrial development project, as established or to be established, subject to the following conditions:

(1) Industrial development projects to be established:

(i) The corporation shall have first determined that the buyer holds funds in an amount equal to, or property of a value equal to, not less than [20%] of the estimated cost of establishing the industrial development project, which funds or property are available for and shall be applied to the establishment of the project, and

(ii) the corporation shall have also determined that the responsible buyer has obtained from other independent and responsible sources, such as banks or insurance companies, a firm commitment for all other funds, over and above the loan of the corporation and such funds or property as an industrial development agency may hold, necessary for payment of all the estimated cost of establishing the industrial development project, and that the sum of all these funds, together with the machinery and equipment to be provided by the responsible tenant or responsible buyer is adequate to insure completion and operation of the plant or facility.

(2) Industrial development projects established without initial corporation loan participation:

(i) the corporation shall have first determined that the responsible buyer has expended funds in an amount equal to, or has applied property of a value equal to, not less than [20%] of the cost of establishing the industrial development project, and

(ii) the corporation shall have also determined that the responsible buyer obtained from other independent and responsible sources, such as banks and insurance companies or otherwise, other funds necessary for payment of all the cost of establishing the industrial development project, and that these funds, together with machinery and equipment provided by the responsible tenant or responsible buyer, have been adequate to insure completion and operation of the plant or facility. The proceeds of any loan made by the corporation pursuant to this subsection shall be used only for the expansion of development projects in furtherance of the public purposes of this act.

Any loan of the corporation shall be for a period of time, shall bear interest at a rate determined by the corporation, and shall be secured by bond of the responsible tenant and by mortgage on the industrial development project for which the loan was made, mortgage to be second and subordinate only to the mortgage securing the first lien obligation issued to secure the commitment of funds from other independent and responsible sources for use in financing the industrial development project.

Moneys lent by the corporation to responsible buyers shall be withdrawn from the urban industrial development fund and paid over to the responsible buyer in such manner as the corporation prescribes.

All payments of principal and interest on loans and the principal thereof shall be deposited by the corporation in the urban industrial development fund.

Loans by the corporation to a responsible buyer for an industrial development project shall be made only in the manner and to the extent provided in this act, except in those instances where an agency of the federal government participates in the financing of an industrial development project by loan, grant, or otherwise of federal funds. When any federal agency participates, the corporation may adjust the required ratios of financial participation by the responsible buyer, the source of the independent funds, and the agency in a manner as to insure the maximum benefit available by participation of the federal agency, but no adjustment of ratios shall cause the corporation to make a loan to the industrial development agency in excess of [30%] of the cost or estimated cost of the industrial development project.

Where any federal agency participating in the financing of an industrial development project is not permitted to take as security for such participation a mortgage the lien of which is junior to the mortgage of the corporation, the corporation may take as security for its loan a mortgage junior in lien to that of the federal agency.

Section 7. Appropriations: Urban Industrial Development Fund. The sum of [ ] dollars is [authorized to be] appropriated to the corporation for the purposes set forth in this act. There is created a special account in the treasury of the state to be known as the urban industrial development fund to which shall be accredited any appropriations made by the [legislature] to the corporation as well as other deposits as provided in this act. The fund shall operate as a revolving fund whereby all appropriations and payments made may be applied and reapplied to the purposes of this act. The governor shall transfer to the general fund of the state treasury funds held for the credit of the urban industrial development fund that determines are in excess of the amount needed to carry out the purposes of this act.

Section 8. Exemption from taxation. The exercise of the powers granted by this act will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of their health and living conditions, and will constitute the performance of an essential governmental function. Except for estate and gift taxes and taxes on transfers, any bonds or notes issued under the provisions of this act and the income therefrom shall at all times be free from taxation of every kind by the state and by the municipalities and all other political subdivisions of the state.

Section 9. Annual report. The corporation shall submit to the governor and to the [legislature], within six months after the end of each fiscal year, a complete and detailed report of its activities for the preceding year.

Section 10. Conflicts of Interest. The corporation may purchase, sell, borrow, lend, contract with or otherwise deal with any corporation, trust, association, partnership, or other entity in which any director of the corporation has a financial interest, direct or indirect, if such interest is disclosed in the minutes of the corporation, and if no director having such a financial interest participates in any decision affecting such transaction.

Section 11. Inconsistent provisions of other laws superseded. Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special or local, the provisions of this act shall be controlling.

Section 12. Construction. This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes.

Section 13. Separability. [Insert separability clause.]

Section 14. Effective date. [Insert effective date.]

34-33-00

STATE LAND DEVELOPMENT AGENCY[1]

Land development agencies created by the States and empowered to undertake large-scale urban and new community land purchase, assembly, and improvement offer a promising means of implementing State and local urban growth policies. Specifically, such agencies could: (1) acquire land by negotiation and through the exercise of eminent domain; (2) arrange for site development and construct or contract for the construction of utilities, streets, and other related improvements; (3) hold land for later use; (4) sell, lease, or otherwise dispose of land or rights thereto to private developers or public agencies; and (5) establish local or regional land development agencies. The following draft legislation grants such powers and requires that they be exercised in accordance with, and in furtherance of, the State's urbanization plan.

Particular care should be taken in drafting State legislation authorizing the exercise of eminent domain powers by land development agencies. Such legislation should include a clear and definite finding by the legislature that the acquisition of land for future development is needed to assure the best use for public purposes of an important natural resource. Courts increasingly defer to legislative findings of public purpose. The existence of a formally adopted State urbanization policy identifying certain patterns of development as being in the public interest would substantially buttress such a finding.

The following draft legislation is based in part on the 1968 act that established the New York State Urban Development Corporation.

Section 1 sets forth the findings and purpose. This section declares that a land acquisition program is a major component of state and local urban growth policies. It also notes the difficulties experienced by private enterprise in assembling land suitable for large-scale development. It recognizes the lack of private capital to finance such projects, and declares it to be in the public interest to encourage private enterprise to participate in these programs.

Section 3 of the draft bill establishes a state land development agency within an appropriate state agency or department. As a means of encouraging participation by the private sector, the governor may appoint a land development advisory council to advise the agency with respect to development policies and programs. In addition, the land development agency may establish local committees to advise it concerning the development of an area or local project.

Section 4 empowers the state land development agency to acquire land by negotiation or condemnation, to arrange for site development including construction of utilities, streets, and other related improvements; to hold land for later use; to sell, lease, or otherwise dispose of land to private developers or public agencies; and to establish local land development agencies. The powers assigned to the land development agency are broad enough to meet long-range needs and objectives and they allow flexibility in choosing among various developmental alternatives, so that a wide range of local government and private participation can be encouraged.

Section 5 sets forth procedures to guide the agency and stipulates certain conditions that must exist before site acquisition and improvement is undertaken. The section requires that local needs and desires be given primary consideration when consistent with the goals set forth in State urbanization policies and plans.

Section 6 provides for the disposition of land by the state agency to public agencies or private developers, and Section 7 provides for letting construction contracts. Section 8 authorizes the establishment of local

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[1] **This draft bill incorporates one of several approaches suggested in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth,* as measures for States to consider in implementing policies for urban growth and new community development.**

land development agencies. Section 9 sets forth the requirements for acquisition of real property by the state land development agency.

Section 10 provides that the state agency's rules and regulations for project development shall prevail over local regulations where there is a conflict. Existing local controls usually are designed basically to deal with problems in built up areas or those experiencing gradual growth and accretion, and often do not produce satisfactory results under the extreme pressures of rapid urbanization.

Section 11 authorizes the state land development agency to issue bonds on the full faith and credit of the state within limits set by the legislature, the bonds to be retired out of revenues and receipts derived from the lease or sale of land by the agency. Section 12 provides for the creation of a special revolving account to be known as the land development financing fund to which the legislative may appropriate funds and in which are deposited proceeds from the sale of bonds and land as well as any other monies made available to the state land development agency for the purposes of this act.

To prevent undue loss of revenues to local governments while land is being held by the agency for future project development, Section 13 provides for annual State reimbursement of a portion of the local property taxes on the land.

Section 14 requires the agency to submit an annual report to the governor and the legislature at the end of each fiscal year. Section 15 provides for a separability clause and Section 16 specifies the effective date of the bill.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion:
"An act establishing a State Land Development Agency."]

(Be it enacted, etc.)

Section 1. Findings and Purpose. It is hereby found and declared that:

(1) local planning and development controls in this state are inadequate to cope with the pressures placed on land and its development in rapidly growing urban areas;

(2) efficiency and economy in the provision of public services, both in capital outlay and operating cost, depends upon a sound method of acquiring land and for the planning of its use for future public and urban development uses;

(3) public acquisition of land, the planning of its use, and the establishment of sound development standards would help preserve one of the state's primary resources;

(4) private enterprise has encountered difficulty in providing new industrial, commercial, and residential facilities in new large-scale urban development, because of problems in assembling land suitable for building sites, the difficulty of attracting private capital at reasonable cost to finance development, and the difficulty of private enterprise alone to plan, finance, and coordinate industrial and commercial development with residential developments for persons and families of low-income and with adequate public services to serve the development;

(5) state acquisition of land, site improvement, and disposition of land around the fringe of urban growth areas, and at other points in anticipation of future growth, provide a major method for implementing state and local urban growth policies for assisting private developers.

It is further declared that it is the policy of this state to promote the safety, health, and welfare of the people through sound community development by private enterprise, and public acquisition of land for public and private use.

Section 2. Definitions. As used in this act:

(1) "Agency" means State Land Development Agency created by section 3 of this act.

(2) "Bonds" means bonds issued by the Agency pursuant to this act.

(3) "Local Land Development Agency" means an agency created by section 8 of this act.

(4) "Municipality" means any county, city, town, or village.

(5) "Director" means [the head of the department or agency charged with carrying out this act].

(6) "Project" means an undertaking or improvement including lands, buildings and improvements for community use, real properties or any interest therein, that are acquired, owned, constructed, or improved by the agency or local land development agency in accordance with, and in furtherance of, the state's urbanization plan. A project shall consist of at least [1,000] acres, or a smaller area only if it is found by the agency to be an integral part of a large-scale development or new community established in accordance with the state's urbanization plan.

(7) "Improvements" means provision of public improvements, such as streets, sewer and water lines and other utilities, recreational facilities, and other community amenities.

(8) "State Urbanization Plan" means [cite appropriate statutes, official documents, and other instruments which set forth the state's policies and official guidelines for promoting and encouraging urban growth].

Section 3. State Land Development Agency. (a) There is created a State Land Development Agency in [appropriate state agency or department in charge of local affairs]. The [appropriate state agency or department in charge of local affairs] shall administer this act through the agency, which shall be headed by a director appointed by the head of the [appropriate state agency or department in charge of local affairs] [subject to the approval of the governor].

(b) The governor may appoint a land development advisory council to advise and make recommendations to the agency with respect to development policies and programs in order to encourage maximum participation by the private sector of the economy. The council may consist of not more than [twenty-five] members who shall serve at the pleasure of the governor. Members shall serve without salary but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties.

(c) The agency may establish one or more local advisory committees to consider and advise the agency upon matters submitted to it concerning the development of any area or any project. The members of such committees shall serve at the pleasure of the head of the [appropriate state agency or department in charge of local affairs], but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties.

Section 4. Powers and Duties. The agency shall have the power to:

(1) make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this act;

(2) acquire or contract to acquire from any person, firm, corporation, municipality, federal or state agency by grant, gift, purchase, condemnation, or otherwise, leaseholds, real, personal or mixed property or any interest therein; and to own hold, clear, improve and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same;

(3) carry out its responsibilities and perform its functions through one or more local land development agencies. To carry out the purpose of this act, the state agency may transfer to any local development agency any monies, real or personal property, mixed property, or any project.

(4) acquire, construct, reconstruct, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project for site development and construction of utilities, streets, and related improvements;

(5) arrange or contract with a local government for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places or for the furnishing of facilities or for the acquisition by a municipality of property or property rights or for the furnishing of property or services in connection with a project;

(6) sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or encumber any project, and in the case of the sale of any project, to accept a purchase money mortgage in connection therewith; and to lease, repurchase or otherwise acquire and hold any project which the corporation has theretofore sold, leased, or otherwise conveyed, transferred or disposed of;

(7) grant options to purchase any project or to renew any leases entered into by it with respect to any of its projects, on such terms and conditions as it may deem advisable;

(8) prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project for site improvement and construction of streets, utilities, and related improvements; from time to time to modify such plans, specifications, designs or estimates; and to hold public hearings on such plans;

(9) manage any project, whether then owned or leased by the agency, and to enter into agreements with any state agency, municipality, county, or any agency or instrumentality thereof, or with any person, firm, partnership or corporation, either public or private, for the purpose of causing any project to be managed;

(10) provide advisory, consultative, training and educational services, technical assistance, and advice to any state agency, municipality, county, or agency or instrumentality thereof, any person, firm, partnership or corporation, either public or private, in order to carry out the purposes of this act;

(11) lend funds, secured or unsecured, grant funds, to any local land development agency, and to purchase, sell, or pledge the shares, bonds, or other obligations or securities thereof, on such terms and conditions as the agency may deem advisable;

(12) make mortgage loans, including temporary loans or advances, to any local land development agency, or to any person, firm, partnership or corporation, and to undertake commitments therefor. Any such commitment, mortgage, or bonds or notes secured thereby may contain such terms and conditions not inconsistent with the provisions of this act as the agency may deem necessary or desirable to secure repayment of its loan, the interest thereon, and other changes in connection therewith;

(13) subject to the provisions of any contract with noteholders or bondholders, to consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, or any other term, of any mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the agency is a party;

(14) in connection with any property on which it has made a mortgage loan, to foreclose on any such property or commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract or other agreement, and to bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; and in such event the agency may complete, administer, pay the principal of and interest on any obligations incurred in connection with such property, dispose of, and otherwise deal with such property, in such manner as may be necessary or desirable to protect the interests of the agency therein;[1]

(15) borrow money and to issue its negotiable bonds and notes and to provide for the rights of the holders thereof;

(16) as security for the payment of the principal of and interest on any bonds so issued and any covenants made with respect thereto, mortgage and pledge any or all of its projects, whether then owned or thereafter acquired, pledge the revenues and receipts therefrom or from any thereof, assign or pledge the lease or leases on any portion or all of said projects, and assign or pledge the income received by virtue of said lease or leases;

(17) invest any funds held in reserve or sinking funds or any monies not required for immediate use or disbursement, at the discretion of the agency [and with the approval of the state treasurer], in obligations of the state or of the United States Government or obligations the principal and interest of which are guaranteed by the state or the government of the United States;

[1] States may wish to make general foreclosure laws applicable.

(18) procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;

(19) engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(20) contract for and to accept any monies, gifts, grants or loans of funds or property or financial or other aid in any form from the Federal Government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source and to comply, subject to the provisions of this act, with the terms and conditions thereof; and

(21) do any and all other things, not in conflict with other provisions of this act, necessary or convenient to carry out the purposes and exercise the powers given and granted in this act.

Section 5. Findings for Land Acquisition. Notwithstanding any other provision of this act, the agency shall not be empowered to undertake the acquisition, and improvement of a project unless:

(1) primary consideration has been given to local needs and desires as expressed in local and regional plans and to statewide needs set forth in state urbanization policies and plans;

(2) project plans have been filed with local officials of the municipalities involved, including the local and areawide planning agency;

(3) there is published in at least one newspaper of general circulation in the county or counties in which the project is proposed to be located[1] a notice of public hearing to be held on the plan for acquisition, such hearing to be held not less than [30] days after publication;

(4) there exists, in the area in which the project is to be located, a need for safe and sanitary housing accommodations for persons or families of low-income, which the operations of private enterprise cannot provide;

(5) the acquisition and construction, proposed leasing, operation and use of such project will aid in the development, growth and prosperity of the state and the area in which such project is located;

(6) the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with public needs; and

(7) there is a feasible method for the prompt relocation of families and individuals displaced from the project area, where such displacement occurs, into decent, safe, and sanitary dwellings, which are or will be provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places of employment. The agency may

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[1] States should follow their usual practice with regard to publication of notices of public hearings.

render to business and commercial tenants displaced from the project area such assistance as it may deem necessary to enable them to relocate.

Section 6. Sale or Lease of Land. (a) The agency may sell or lease for a term not exceeding ninety-nine years all or any portion of the real property constituting a project to any public agency, person, firm, partnership or corporation, either public or private, upon such terms and conditions as may be approved by the agency whenever the agency shall find that such sale or lease is in conformity with a plan or undertaking for large-scale or new community development in the municipality in which the project is located. Such sale or lease may be made:

(1) to any local land development agency, subject to public notice and hearing; and

(2) to any person, firm, partnership or corporation, [without public bidding subject to public notice and hearing].

(b) There shall be published in at least one newspaper of general circulation in the county or counties in which the project is located a notice which shall include a statement of the identity of the proposed purchaser or lessee and of his proposed use or reuse of the project area or applicable portion thereof, the price or rental to be paid by such purchaser or lessee, all other essential conditions of such sale or lease, and a statement that a public hearing upon such sale or lease will be held before the agency at a specified time and place on a date not less than ten days after such publication, and provided further that such public hearing is held in accordance with such notice.

(c) The agency may sell or lease for a term not exceeding ninety-nine years any project, or part thereof, to the state or to any agency or instrumentality thereof, to any municipality or agency or instrumentality thereof, or to any non-profit corporation established for a public purpose, for use not inconsistent with the purposes of this act. Any such sale or lease may be made without public bidding, upon such terms and conditions as the agency, within its discretion, may determine to be necessary or desirable. The agency may enter into a contract for a sale or lease at the date of, or subsequent to the completion of the project by the agency. Where such contract for sale or lease is entered into after the commencement of construction and prior to the physical completion of the improvement to be sole or leased, the agency may complete the construction and development of such improvement prior to the actual conveyance or lease.

Section 7. Improvement Construction Contracts. (a) Construction contracts let by the agency shall be in conformity with [cite appropriate state law], provided, however, that construction contracts let by local land development agencies shall be governed by the applicable provisions of [cite appropriate local government enabling legislation].

(b) The agency may, in its discretion, assign contracts for supervision and coordination to the successful bidder for any subdivision or work for which the agency receives bids. Any construction contract awarded by the agency shall contain such other terms and conditions as the agency may deem desirable. The agency shall not award any construction contract except to the lowest bidder who, in its opinion, is qualified to perform the work required and who is responsible and reliable.

Section 8. Local Land Development agencies authorized. Subject to the approval of the governor, the agency may authorize any city or county, [or other designated unit of local general government], or combination thereof, to establish a local Land Development Agency. Such authorization shall prescribe the purposes for which the local land development agency is to be formed.

Section 9. Acquisition of Real Property. (a) The agency, upon making a finding that it is necessary or convenient to acquire any real property for its immediate or future use, may acquire such property in any lawful manner, including condemnation pursuant to the provisions of the condemnation law where not inconsistent with this act, notwithstanding that such property may already be devoted to a public use, nor shall such property thereafter be taken for any other public use without the consent of the governor.

(b) Every reasonable effort shall be made to acquire the real property by negotiated purchase. It shall be the policy of the head of the agency, before initiating negotiations for real property, to establish a price which he believes to be a fair and reasonable consideration therefor, and to make a prompt offer to acquire the property for the full amount so established.

(c) Prior to the commencement of condemnation proceedings, the agency shall cause a survey and map to be made of the property to be condemned and file the same in its office. There shall be annexed thereto a certificate, executed by such officer or employee as the agency may designate, stating that the property described in such survey and map is necessary for public purposes.

(d) It shall be lawful for the duly authorized agents of the agency to enter the real property, at reasonable hours, and with adequate notice, for the purpose of making such surveys and maps, or for the purpose of making such soundings, borings and appraisals as may be deemed necessary.

(e) All condemnation proceedings hereunder shall be brought in the [cite court of appropriate jurisdiction] and the compensation to be paid shall be determined by the court.[1]

(f) The court may in its discretion decree that title to any real property acquired hereunder by condemnation shall vest in the agency upon the entry and filing of an order of immediate possession.

(g) No award of compensation shall be increased by reason of any increase in the value of real property caused by the actual or proposed acquisition or the use or disposition by the agency of any other real property for public purposes.

(h) No owner will be required to surrender possession of real property before the head of the state agency (1) pays the agreed purchase price, (2) makes available to the owner, by court deposit or otherwise, an amount not less than [75] per centum of the appraised fair value of such property, as approved by such state agency head, without prejudice to the right of the owner to contest the amount of compensation due for the property, or (3) deposits or pays the final award of compensation in the condemnation proceeding for such property.

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[1] States may desire to make general condemnation laws apply to these proceedings.

(i) Any decrease in the value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for the proposed public improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

(j) For the purposes of determining the extent of the acquisition of real property and the value thereof, no building, structure, or other improvement will be deemed to be other than a part of the real property solely because of the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement, and than an amount not less than the value which such building, structure, or improvement contributes to the value of the real property acquired, or the value of such building, structure, or improvement for removal from the real property, whichever is the greater, will be paid to the tenant therefor.

(k) All persons in possession of such property at the time of such vesting of title, shall at the option of the agency become tenants at will thereof, and pay a rent to be agreed upon, unless within ten days after vesting such persons actually remove from the premises.

(l) In no event shall the interest upon any claim arising from condemnation hereunder exceed [ ] per cent per annum.

Section 10. Regulations. All projects acquired, constructed, improved, maintained or operated by the agency, or by any local land development agency, shall comply with the rules and regulations of the agency. If the requirements of any local law, code, charter, ordinance, zoning ordinance, rule or regulation, is in conflict with the rules and regulations of the agency, the agency's rules and regulations shall prevail.

Section 11. Bonds. The agency may from time to time issue bonds on the full faith and credit of the state not to exceed an aggregate principal amount of [ ] dollars, and may issue revenue bonds, payable out of revenues and receipts derived from the lease or sale by the agency of its projects and properties.

Section 12. Land Development Financing Fund. There is hereby created a special account in the state treasury to be known as the Land Development Financing Fund to which shall be credited the amount appropriated pursuant to this act, subsequent appropriations made by the legislature for this purpose, any proceeds of sale of bonds to the extent provided by the agency authorizing issuance thereof, and any other monies which may be made available to the agency for the purposes of this act from its own operations and from any other source or sources. The sum of [ ] dollars is hereby authorized for establishing the fund. The agency may expend whatever amounts are needed for the payments

authorized by this act. If at any time the governor determines that the amount of the land development financing fund is greater than the amount needed to carry out the provisions of this act, he may transfer to the general fund of the state treasury whatever amount he finds to be in excess.

Section 13. Payments to Local Governments. **In order to prevent undue loss of revenues to political subdivisions during the period when land is being held by the agency for project development, there shall be annually apportioned and paid by the state to any political subdivision in which a project is located, a sum equal to [ ] per cent of the annual real property taxes on such land, paid or due to the political subdivision.**

Section 14. Annual Report. **The agency shall submit to the governor and the legislature at the end of each fiscal year a report setting forth its operations and accomplishments, its receipts and expenditures, its assets and liabilities, and a schedule of its outstanding bonds.**

Section 15. Separability. **[Insert separability clause].**

Section 16. Effective Date. **[Insert effective date].**

34-34-00

LOCAL INDUSTRIAL DEVELOPMENT BOND FINANCING

Local governments in about thirty states are authorized to issue bonds to finance industrial plants for lease to private enterprise. This method of attracting industry is rapidly increasing, as is the size of individual local bond issues for this purpose.

If allowed to expand without proper safeguards, the use of industrial development bond financing by local governments may impair tax equities, competitive business relationships, and conventional financing institutions out of proportion to its contribution to economic development and employment.

In recent years, a number of abuses have been identified with industrial development bond financing, often attracting unfavorable public notice to the detriment of the public's regard for local government administration, particularly for the financial administration of the localities which participate in the practice. Some communities have used development bonds to finance enterprises in excess of their employment needs, and which impose demands for public services the community cannot supply without overburdening its taxpayers and saddling itself with excessive contingent liabilities in the form of debt service on the bonds. The practice has been subject to other abuses: financing plants for national corporations with adequate credit resources; pirating established firms by one community from another; and enabling specially incorporated areas with relatively few residents to develop tax havens at the expense of neighboring communities. Abuse of the practice for private advantage tends to reflect on the tax exemption of municipal securities generally, and led Congress, in 1968, to limit the tax exemption privilege on industrial development bonds to issues of $5 million or less.

The accompanying suggested act would establish safeguards against the kinds of abuse enumerated above, by: (1) subjecting all industrial development bond issues to approval by a state supervising agency; (2) restricting authority to issue such bonds to local units of general government (counties, municipalities, and organized townships); (3) giving priority to communities with chronic surplus labor, outside the area of the effective operation of conventional credit; (4) limiting the total amount of such bonds which may be outstanding at any one time in the state; (5) prohibiting such financing for the pirating of industrial plants by one community from another; and (6) providing machinery for informing the public as to proposed industrial development bond projects, and to enable citizens to initiate referenda on such projects.

The development of the draft was stimulated by a study completed by the Advisory Commission on Intergovernmental Relations. The subject to which it is addressed is, of course, but one of a number of devices and procedures designed to stimulate economic development. Such stimulation as its use might contribute to the economy of a local area must not be diluted by its potential abuses. As the ACIR warned in its report, *Industrial Development Bond Financing* –

> We conclude that the industrial development bond tends to impair tax equities, competitive business relationships and convential financing institutions out of proportion to its contribution to economic development and employment. It is therefore a device which the Commission does not endorse or recommend. However, the Commission recognizes the widespread and growing nature of this practice and the unlikelihood of its early cessation. Therefore, we conclude that if the practice is to continue, a number of safeguards are absolutely essential. These safeguards are required to minimize intergovernmental friction, to insure that the governmental resources deployed for this purpose bear a reasonable relationship to the public purpose served, and that the governmental powers employed are not diverted for private advantage.

34-34-00

Suggested Legislation

[Title should conform to state requirements.
The following is a suggestion: "An act relating
to industrial development bonds."]

(Be it enacted, etc.)

Section 1. Purpose. The legislature hereby finds and declares that the issuance of industrial development bonds as herein described must be placed under proper safeguards in order that the fiscal integrity of the state and its political subdivisions be preserved, that the conventional credit facilities of private enterprise not be displaced, and that local government financing not be abused. It is the intent of this act, therefore:

(1) To insure that the issuance of local government industrial development bonds is conducted in such a manner as to make a maximum contribution to the orderly industrial development of the state;

(2) To avoid overextension of local government industrial development credit;

(3) To prevent abuse of tax-exempt local government industrial development bonds; and

(4) To provide technical assistance to local units of general government choosing to utilize industrial development bond financing.

Section 2. Definition. As used in this act:

(1) "Industrial development bond" means an obligation[1] issued by any local unit of government of the state for the purpose of financing the acquisition of land, the acquisition or construction (including reconstruction, improvement, expansion, extension, and enlargement) of buildings and appurtenances and the acquisition and installation of machinery, equipment, or fixtures, the purpose of such financing being primarily to sell or lease the property so financed to a private individual, partnership, or corporation for the conduct of manufacturing, warehousing, distribution, and/or research and development operations, except [docks, wharves and marine warehouses, airport terminal and hanger facilities, other transportation facilities, municipal stadiums, theaters, and other appropriate exceptions].

(2) "Local unit of general government" means a county or a city or a [town, township, borough, etc.].

(3) "Agency" means [insert name of the appropriate agency of state government, normally the

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[1] Although it is not recommended by the Advisory Commission, some states may feel it expedient to exclude general obligation (full faith and credit) bonds from the purview of this legislation on the grounds that a number of state controls normally operate with regard to the issuance of general obligation bonds by local governments that do not obtain in the issuance of revenue bonds.

agency, if any, that is charged generally with concern or oversight regarding local government debt, that provides technical assistance to local governments in the sale of their bonds, or that provides general services or assistance to local governments].

Section 3. Authorization. Industrial development bonds may be issued only by local units of general government located in such areas designated by the agency as having substantial and persistent unemployment or underemployment and as being outside the area of regular and effective operation of existing conventional credit facilities which are able to provide credit in adequate amounts.[2] Such local units of general government are hereby authorized to issue industrial development bonds subject to the conditions of this act.

Section 4. Statutory limitations imposed upon the borrowing powers of local units of general government shall be construed as not being applicable with respect to the issuance of industrial development bonds. In addition to the limitations on the powers of local units of general government provided in this act, the agency shall limit the aggregate volume of industrial development bonds outstanding at any time on behalf of all local units of general government in the state to an amount not to exceed [insert one of the following three alternatives: (1) [   ] percent of the personal income of the population in the state as last determined by the United States Department of Commerce; (2) [   ] percent of total state and local tax collections in the state during the preceding fiscal year; (3) [   ] dollars]. The agency shall determine from time to time the aggregate volume of industrial development bonds which may be issued pursuant to this limitation and in the light of employment needs and industrial development prospects shall allot among all eligible local units of general government the amount of industrial development bonds each may issue.

Section 5. The agency may employ personnel necessary to carry out the provisions of this act. The agency is empowered to issue rules and regulations and to require information necessary for the administration of this act.

Section 6. All departments, division, boards, bureaus, commissions, or other agencies of the state government shall provide assistance and information as the agency may require to enable it to carry out its duties under this act. In its deliberations incident to the administration of this act the agency shall consider the advice of the [state planning and development agencies and] local planning agency regarding resource utilization and developmental plans for the various areas of the state.

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[2] Some states may wish to designate as eligible under this provision all local units of general government having surplus labor that are outside any standard metropolitan statistical area, as defined by the U.S. Bureau of the Census, on the ground that conventional credit facilities may be presumed adequate in the large urban areas. States may also with the agency to take into consideration projects that are being constructed or proposed under federal programs administered by the Economic Development Administration and the Small Business Administration.

Section 7. No local unit of general government may issue industrial development bonds without first having been issued a certificate of convenience and necessity therefor. Such certificate shall be issued by the agency upon a petition of the local unit of general government proposing to issue industrial development bonds upon the agency finding:

(1) that the local unit of general government has a contract with an individual, partnership, or corporation to lease the property to be acquired with the proceeds of the industrial development bonds for occupancy and use in connection with the conduct of an industrial enterprise for a period of years, and for the lessee to pay an annual rental adequate to meet interest and principal payments falling due during the term of the lease;

(2) that the lessee of the property is a responsible party;

(3) that the contract for lease of the property provides for:

(i) the reasonable maintenance, less normal wear and tear, of the property by the lessee;

(ii) insurance to be carried on the property and the use and disposition of insurance moneys;

(iii) the rights of the local unit of general government and the lessee respecting the disposition of the property financed by the proposed industrial development bonds upon retirement of the bonds or termination of the contract by expiration or by failure to comply with any of the provisions thereof;

(4) in addition to the above, the contract may provide for the rights of the bondholders, the care and disposition of rental receipts, and such other safeguards as are deemed to be necessary by the agency;

(5) that opportunities for employment are inadequate in the area from which the proposed industrial plant would reasonably draw its labor force and that there exists in that area a condition of substantial and persistent unemployment or underemployment;

(6) that the proposed project will provide employment having a reasonable relationship to the volume of the bonds issued as compared to investment per employee of comparable industrial facilities;

(7) that financing by banks, other financial institutions, or other parties, of the property required by the lessee is not readily available to the lessee on ordinary commercial terms in adequate amounts either on the local market or on the national market;

(8) that no portion of the proposed industrial development bond issue will be purchased by the lessee or any affiliate or subsidiary of the lessee at the time of the initial marketing;

(9) that the facility offered the lessee is intended to accommodate expansion of an enterprise located elsewhere or a new enterprise and not primarily the relocation of an existing facility;

(10) that adequate provision is being made to meet any increased demand upon community

public facilities that might result from the proposed project; and

(11) that the issuance of the proposed bonds and the operation of the enterprise of the lessee will not disrupt the fiscal stability of the issuing local unit of general government in the event it should become necessary for it to assume responsibility for payment of the interest and principal of the proposed industrial development bonds.

Section 8. (a) Within [   ] days after a local unit of general government files a petition, completed in accordance with the rules and regulations authorized in section 5, the agency shall upon due notice, hold a hearing upon the petition. The agency shall reasonably expedite any such hearing and shall advise the petitioning local unit of general government of its decision within [   ] days of the adjournment of a hearing. If the agency approves the petition a certificate of convenience and necessity shall be issued forthwith. Failure of the agency to advise the petitioning local unit of general government of its decision within [   ] days of the conclusion of the hearing shall constitute approval of such petition, and the local unit of general government shall be entitled to receive such certificate. Decisions of the agency shall be [reviewable as provided in the state administrative procedure act] [final as to findings of fact].

(b) A certificate of convenience and necessity issued as provided in this act shall expire in twelve months from the date of its issuance provided that, upon written application by the local unit of general government to the agency, with such information as the agency may require, the agency may in its discretion extend the expiration date of such certificate for a period not to exceed [   ] months.[3] If, at any time during the life of such certificate, the authority of the local unit of general government to proceed thereunder is contested in any judicial proceeding, the court in which the proceeding is pending or, upon proper application, to the agency, the agency may issue an order extending the life of such certificate for a period not to exceed the time from the initiation of such proceeding to final judgment or other termination thereof.

Section 9. (a) A local unit of general government which holds a certificate of convenience and necessity issued and in force pursuant to this act may incur bonded indebtedness, subject to the limitations and procedures of this act and of other applicable laws.

(b) Prior to authorization of the incurring of bonded undebtedness pursuant to this act, public notice as provided in [cite appropriate sections of state law] shall be given. In addition to any other items which the notice is required to or may contain, such notice shall include: (1) the nature of the project;

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[3] States including section 9 (b) in their acts may wish to consider a longer period of initial life for a certificate in order to accommodate the time intervals necessary for the referendum procedure.

(2) the amounts of bonds to be issued; and (3) the security behind the bond issue; the right, as provided herein, of petition for a referendum; and the place at which a true copy of the contract is available for examination. If, within [60] days thereafter, no petition for a referendum has been received the local unit of general government may proceed with the issuance of the bonds.

(c) Except to the extent that they are in conflict with this act, the [cite statutes empowering local governments to issue bonds and prescribing applicable procedures] shall apply to the authorization, and issuance and sale of industrial development bonds by the local units of general government.

Section 10. If within the time limits prescribed in section 9 (b), [ ] percent of the eligible voters resident within the borders of the unit of government proposing to issue industrial development bonds, by signing a petition to the governing body, shall request that the proposal to issue the bonds be subjected to referendum of the electorate, an election shall be ordered in accordance with [cite those sections of the law applicable to bond elections], except that, notwithstanding any other provisions of law, a majority of the qualified voters voting on the question shall resolve it. If a majority of those voting on the question vote "no" the certificate of convenience and necessity shall be void.

Section 11. The agency shall make an annual report to the governor and legislature, including recommendations to further the purposes of this act.

Section 12. Sections [insert any legal citations authorizing other issuance of industrial development bonds] are hereby repealed.

Section 13. Separability. [Insert separability clause.]

Section 14. Effective Date. [Insert effective date.]

35-10-00

STATE MODEL BUILDING CODE AND ESTABLISHMENT OF STATEWIDE BUILDING CONSTRUCTION STANDARDS

There are many thousands of local jurisdictions in the United States administering and enforcing building codes with widely varying provisions. Many of the difficulties and needs in building code adoption, administration, and enforcement have been documented in a report of the Advisory Commission on Intergovernmental Relations entitled *Building Codes: A Program for Intergovernmental Reform.*

The Commission concluded that a widely adopted uniform building code would go far toward eliminating arbitrary restrictions which in turn add to the cost of production. Adoption of uniform building codes would stimulate initiative and innovation in the development of new construction materials and techniques by making possible a prompt, wide market for such products. It would reduce the cost of research and testing which is incurred in the development, maintenance, and servicing of building codes by local governments.

Traditionally, building code preparation, administration, and enforcement have been delegated to local governments by the states as an exercise of the states' police powers. State governments, however, still retain some jurisdiction in building regulatory matters and are frequently involved in administering minimum building and mechanical codes.

State and local governments occupy a key position in efforts to modernize building codes and to achieve uniformity. It is at the state and local levels that broad police power exists to regulate all phases of building construction. The major ultimate responsibility for administration and enforcement of building regulations must and will remain with local jurisdictions. State governments, therefore, have a significant responsibility to provide the framework within which the objectives of modernization and uniformity can be realized.

In its report, the Commission recommended preparation of a model state code and procedures for adoption and maintenance by local governments. It is the purpose of the draft legislation which follows to suggest language which will accomplish this objective. Naturally, the state agency responsible for preparation of a model state building code should take into account the standards and requirements of nationally recognized codes. The Commission urges, at a minimum, that states not establishing a model code program, facilitate the adoption and amendment of nationally recognized models by local governments. This can be accomplished through enabling legislation authorizing adoption and amendment of codes by reference.[1]

The Commission also recommended the establishment of an appeals procedure through a state construction review agency to develop uniform statewide building standards by an evolutionary process as the need arises. Language to accomplish this objective is also included in the draft legislation.

Adoption of modern and uniform codes throughout a state is increasingly being achieved through the development and maintenance of model state building codes. In Connecticut, New Jersey, and New York, state agencies have been assigned responsibility for developing model building construction codes for optional adoption by local governments. The Minnesota State Building Code for Public Buildings will be available to local governments for adoption by reference in the near future. In North Carolina and Wisconsin, state agencies responsible for the mandatory minimum statewide building regulations over certain types of construction have developed optional model codes for one- and two-family dwellings, not subject to regulation under provisions of the mandatory code.

The most extensive program of state development of model building codes is that of New York. The State Building Construction Code has been adopted by more than 450 communities – nearly two-thirds of the codable municipalities in the state. Local governments may adopt the state code by simple resolution. Once adopted, however, changes of the technical provisions by a community must be approved by the state.

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[1] For suggested adoption and amendment by reference legislation see page 32-40-00.

The provisions of the following suggested legislation to develop a model state code are based on the New York State Building Code Law (Article 18 of the Executive Law, Chapter 66 of the Laws of 1964). The provisions for establishing a building construction review authority to develop statewide standards through an appeals procedure, are based in part on Chapter 143, General Laws, Commonwealth of Massachusetts.

The model state building code provisions of the proposed act do not disturb the traditional authority of municipalities and counties for the administration and enforcement of building regulations. They do, however, make available to localities the resources of state government in developing modern, tested performance-type code provisions. The state may maintain its own research facilities and a staff of trained architects and engineers and other specialists. It can evaluate new building materials and devices and adopt appropriate standards, model codes, and product approvals of national groups to assist in keeping the state model up-to-date with the latest developments of the building industry.

The building construction review authority applicable to localities which do not adopt the model state building code would, to the extent it is brought into play through appeals by interested parties, establish standards which localities would be required to apply in the administration and enforcement of building regulations.

Sections 1 and 2 of the suggested statute deal with purpose and definitions. Section 3 of the statute provides for the establishment of a division of building codes. The bill places the division within an existing state department rather than creating a new independent body, as many states are already involved in regulatory programs governing construction. Section 4 creates a building code advisory council for the division. The chairman of the seven-member council would be the head of the state department in order to provide adequate coordination between the council and the administrative agency. The members are appointed by the governor and one member of the council must be a registered architect or professional engineer licensed to practice within the state. The council is empowered to make recommendations, review rules and regulations of the division, and to provide advice to the division.

Section 5 empowers the division to prepare and adopt the "state building construction code." The agency is also responsible for recommending tests and approvals of materials and methods to ascertain their acceptability under the requirements of the state building construction code. It is required to issue certificates of approval for materials and building systems to guide localities adopting the state model code. This procedure maintains uniformity in the application of the state code standards and facilitates the introduction of new products and technologies.

Section 6 provides that any municipality and county in the state may adopt by resolution the state model building code. Any local government in which the state building code has become applicable, may withdraw after one year has elapsed by a simple resolution of the local legislative body. To further the objectives of uniformity, section 10 prohibits the local government from amending the model code except as authorized by the state administering agency.

Sections 7, 8, and 9, respectively, establish the legislative objectives and standards of the model code, its application, and adoption, amendment, and repeal procedures. Section 11 provides that conformance to the state model building construction code in adopting jurisdictions shall be deemed to constitute conformity to all applicable building regulations.

The draft legislation in section 12 provides for the establishment of a state level board of appeals and review, appointed by the governor, to provide an administrative avenue of relief for all those aggrieved by the decisions of local government participating in the state model code program as well as to provide relief from decisions not arising under the state model code. Section 13 prescribes the powers and duties of the board on appeals from jurisdictions adopting the state model code. The board's jurisdiction is final on all questions of fact relating to interpretation of the provisions of the state model code. The provision of a single authoritative body to which appeals can be taken is essential to promote uniform interpretation of state provisions and minimize variances introduced as a result of local enforcement. Appeals from the board's decisions may, of course, be taken to the courts for review of questions of law.

In addition to hearing appeals from localities adopting the state model code, the provisions of section 14 authorize the board to hear appeals from local decisions in localities which have not adopted the model code. Such appeals would be based on a claim that the proposed use of a material, component, system, or construction method conforms with nationally recognized standards, accepted engineering practices, and state and national model codes. Appellants could include builders, materials' manufacturers, architects, owners, and other affected parties. The purpose of this section is to facilitate the introduction of new materials of construction and building systems by providing an alternative to the costly and time-consuming procedures of approval established in each individual community not adopting the state model code. By empowering a state level agency to hear appeals from local building code actions and to approve alternatives to the materials and method of construction provided in the local code, an increased degree of building code uniformity could be achieved within the state.

Some states not wishing to establish both a state model building code program and a gradual approach to mandatory uniform standards through a construction review procedure based on appeals, may wish to consider establishing the construction board of review as an independent agency with authority to require the use of uniform building regulation standards throughout the state by issuing rules on appeals. On the other hand, some states may choose to authorize only the model state building code program as the most feasible approach to achieving uniformity.

Section 15 places the full burden of administration and enforcement of the provisions of the state model code on the adopting jurisdictions. Each municipality and county adopting the model code is expressly authorized and empowered to: examine and approve or disapprove plans or specifications for the construction of any building; direct the inspection of such buildings during the course of construction; order the remedying of any condition found to exist in violation of the state model code; issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of buildings; collect fees in connection with issuing building permits; and prohibit construction until a permit has been issued by the local building department. Section 16 authorizes local governments to enjoin violations of any provision of the model code and section 17 establishes penalties for violation.

Section 18 expressly specifies that any municipality or county may continue to enact building regulations, except that jurisdictions accepting the state code may not adopt regulations superseding or more restrictive than the provisions of the model state code. Provisions of this section also specify that nothing in the act shall be construed as abrogating or impairing the power of any local government to enforce provisions of any building regulations, the applicable provisions of the model state code, or to punish violators.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize preparation of a state model building code for permissive adoption by local government and to establish a state construction review board."]

(Be it enacted, etc.)

Section 1. Findings and Purpose. It is essential that building codes be adopted and enforced to protect the health, safety, welfare, comfort, and security of the residents of this state but buildings should be permitted to be constructed at the least possible cost consistent with recognized standards of health and safety. Many persons in the state are unable to secure adequate housing at prices or rentals which they can afford. Such conditions are contrary to the public interest, and threaten the health, safety, welfare, comfort, and security of the people of the state. Other persons, and commerce and industry generally are affected by rising costs in the construction of nonresidential buildings. Construction costs for buildings of all types have risen to unprecedented levels.

Among the factors inducing high costs of construction are various laws, ordinances, rules, regulations, and codes regulating the construction of buildings and the use of materials therein. Many such requirements are obsolete and unnecessarily complex. They serve to increase cost, without providing correlative benefits or safety to owners, builders, tenants, and users of buildings. It is the purpose of this act to institute the preparation of a state code of building construction to provide, so far as may be practicable, basic and uniform performance standards. Thus, while establishing reasonable safeguards for the security, welfare, and safety of the occupants and users of buildings, the use of modern methods, devices, materials, and techniques will be encouraged. This should be effective in lowering construction costs.

Because it is essential that any such code be readily adaptable to changing conditions, detailed enactment of all of the provisions of such a code by legislation is impracticable.

Section 2. Definitions. The following words and phrases have the following meanings:

(1) "Advisory council" means the state building code advisory council created by this act.

(2) "Board of appeals and review" means the state building construction board of appeals and reviewed created by this act.

(3) "Municipality" means any city, town, or village.

(4) "County" means any county in this state.[1]

(5) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted, by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to the construction, reconstruction, alteration, conversion, repair, or use of buildings and installation of equipment therein. The term does not include zoning ordinances.

(6) "Division" means [state agency charged with preparation and promulgation of state building construction code].

(7) "Director" means [the head of the department or agency charged with the preparation and promulgation of the state building construction code].

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[1] States that do not presently authorize counties to adopt building codes and that wish to make the state model code available to them, will have to enact additional authorizing legislation.

(8) "Local building regulations" means building regulations hereto fore or hereafter enacted or adopted by or for any municipality.

(9) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

(10) "State agency" means any state department, board, bureau, commission, or agency of this state.

(11) "Building" means a combination of any materials, whether portable or fixed, having a roof, to form a structure for the use or occupancy by persons, animals, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(12) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb waiters, escalators, and other mechanical additions or installations.

(13) "Construction" means the constructions, reconstruction, alteration, conversion, repair, equipment, or use of buildings, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

(14) "Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(15) "Local legislative body" means the council, board, trustees, board of commissioners, or other legislative body charged with governing the municipality or county.

(16) "State building construction code" means the state building construction code provided for in section 5 hereof, or any portion thereof of limited application, and any of its modifications or amendments.

Section 3. Division of Building Codes. There is hereby created a division of building codes, hereinafter referred to as "the division," in the [appropriate state department].[1] The [appropriate state department] shall administer this act through the division, which shall be headed by a director appointed by the head of the [appropriate state department].

Section 4. Advisory Council. (a) There is hereby created a building code advisory council, hereinafter referred to as the "advisory council," of seven members to be appointed by the governor, including at least one member who is a registered architect or professional engineer, competent in the field of building regulations.

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[1] Practice varies among the states concerning statutory assignment of responsibility. Some states may wish to assign general responsibility to an appropriate existing agency thus giving authority to the head of the agency to establish the necessary organizational structure within his agency to carry out the purposes of this act.

(b) The director shall serve as secretary of the advisory council. The governor shall select a chairman from among the members of the advisory council.

(c) The members of the advisory council shall serve at the pleasure of the governor. A member shall receive no compensation for his services but shall be entitled to reimbursement for necessary and actual expenses incurred in his official service on the advisory council.

(d) The advisory council shall consider rules and regulations as provided in section 5 and any other matters related to the purposes of this act submitted to it by the director and may make recommendations on its own initiative to the director concerning the administration of this act. The advisory council shall meet at the call of the chairman or at the written request of [three] members, but it shall meet at least once a year.

Section 5. Powers of the Director. In addition to any other powers conferred on him by law, the director shall have the power to:

(1) Adopt, amend, and repeal rules and regulations relating to the construction of all buildings or classes of buildings, or the installation of equipment therein, and to prescribe standards or requirements for materials to be used in connection therewith, including provisions dealing with safety and sanitation. Such rules and regulations shall constitute the "state building construction code" and when adopted as herein provided, shall be acceptable for the buildings to which it is applicable.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, and in connection therewith, issue subpoenas to compel the attendance of witnesses and the production of evidence.

(3) Issue such orders as necessary to effectuate the purposes of this act and enforce the same by all appropriate administrative and judicial proceedings.

(4) Enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under this act.

(5) Study the operation of the state building construction code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health, safety, and security.

(6) Recommend tests and approvals or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building construction code and issue certification of such acceptability.

(7) Provide for the testing and approval of materials, devices, and methods of construction.

(8) Appoint experts, consultants, technical advisers, and advisory committees for assistance and recommendations relative to the formulation and adoption of the state building construction code.

(9) Advise, consult, and cooperate with the advisory council and other agencies of the state, local governments, industries, and interested persons or groups.

(10) Make rules for the organization and internal management of the division, and for such other purposes as necessary and desirable or proper in carrying out the powers and duties of this act.

Section 6. Procedure for Acceptance [and Withdrawal] by Municipalities and Counties. (a) The state building construction code shall be applicable in each municipality and county in the state in which the legislative body has adopted or enacted a resolution accepting the applicability of such code and shall have filed a certified copy of such resolution in the office of the division and in the office of the secretary of state. The state building construction code shall become effective in such municipalities and counties upon the date mixed by the municipality or county in such resolution if the date is not more than [six months] after the date of adoption of the resolution.

[(b) Any municipality or county in which the state building construction code has become applicable, at any time after one year has elapsed since such code became applicable to such municipality or county by resolution of the local legislative body, may withdraw from the application of the code; but before the resolution is voted upon, the local legislative body shall hold a public hearing after giving not less than [twenty] nor more than [thirty] days' public notice together with written notice to the division of the time, place, and purpose of such hearing. A certified copy of the vote of the local legislative body thereon shall be transmitted, within [ten] days after the vote is taken to the division and to the [secretary of state] for filing in the office of the [department of state]. The resolution shall become effective at a time to be specified therein, which shall be not less than [one hundred eighty] days after the date of adoption. Upon the effective date of the resolution, the state building construction code shall no longer apply to the municipality or county except that construction of any building pursuant to a permit theretofore issued shall not be affected by the withdrawal.

(c) A municipality or county which has withdrawn from the application of the state building construction code, at any time thereafter, may restore the application of the code in the same manner as specified in subsection (a) of this section.]

Section 7. Standards for Code. The state building construction code shall be designed to effectuate the general purposes of this act and the following specific objectives and standards:

(1) To provide reasonably uniform standards and requirements for construction and construction materials, consonant with accepted standards of engineering and fire-prevention practices.

(2) To formulate these standards and requirements, utilize existing standards, or to formulate new standards where no adequate standard currently exists, so far as may be practicable, in terms of performance objectives, so as to make adequate performance for the use intended the test of acceptability.

(3) To permit to the fullest extent feasible, the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health, safety, and security of the occupants or users of buildings.

(4) To encourage, so far as may be practicable, the standardization of construction practices, methods, equipment, material, and techniques.

(5) To eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs or retard unnecessarily the use of new materials, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

Section 8. Limitation of Application. The director may limit the application of any rule or regulation or portion of the state building construction code so as to include or exclude:

(1) Specified classes or types of buildings, according to use, or such other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable.

(2) Specified areas of the state based upon size, population, density, special conditions prevailing therein, or such other factors as may make differentiation or separate classification or regulation necessary, proper, or desirable.

Section 9. Procedure for Adoption of Rules and Regulations and Their Modification, Amendment, or Repeal. (a) No rule or regulation and no amendment or repeal of the state building construction code shall take effect except after public hearing on due notice [as provided in the state administrative procedure act] [insert desired procedural details, if there is no applicable statute], and the advisory council has been afforded not less than [thirty] days, prior to publication of the proposed text, to comment thereon.

(b) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to sections 13 and 14 of this act.

(c) The text of any proposed rule or regulation or modification, amendment, or repeal of a rule or regulation shall be made available for inspection at the office or offices of the division and shall be distributed to state agencies, local building departments, state municipal law offices, and other interested persons, groups, associations, and societies as may request copies thereof.

(d) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the director shall state the date on which it takes effect.

(e) Every rule or regulation or modification, amendment, or repeal of a rule or regulation, immediately after adoption, shall be certified by the director and transmitted to the [secretary of state] for filing in the office of the [department of state]. Upon filing, the rule or regulation or modification, amendment, or repeal of a rule or regulation shall have the force and effect of law, and the state building construction code shall be deemed amended to the extent thereof and as required thereby.

Copies thereof shall be sent by the director to all state, municipal, and county officers having jurisdiction over the construction of buildings affected thereby.

(f) The provisions of this section shall not apply to any rule or regulation applicable solely to the organization or internal management of the division.

Section 10. Incorporation of Different Standards by Director Upon Recommendation of a Municipality or County. The local legislative body of any municipality or county by resolution duly enacted or adopted may recommend to the director the adoption of rules and regulations imposing different standards for construction in that municipality or county than provided generally for such municipality in the state building construction code.

If the director finds that different standards are reasonably necessary because of special conditions prevailing within the municipality or county and that the standards conform to accepted engineering and fire prevention practices and the purposes of this act, the director may adopt rules or regulations establishing the standards, in whole or part. The director shall have the power to limit the term or duration of such rules or regulations, to impose conditions in connection with the adoption thereof, and to terminate the rules and regulations at such times and in such manner as the director deems necessary, desirable, or proper.

Section 11. Issuance of Licenses, Pemits, and Certificates. Any building hereafter constructed in conformity to the provisions of the state building construction code and the provisions of this act shall be deemed to comply with all state, municipal, and county building regulations, unless modified by section 10, whenever the state building construction code has been adopted by a municipality or county. The owner, builder, architect, lessee, tenant or their agents, or other interested person, upon a showing of compliance with such code, may demand and obtain, upon proper payment being made therefor in appropriate cases, any permit, license, certificate, authorization, or other required document, the issuance of which is authorized pursuant to any state or local building regulation, and it is the duty of the appropriate state, municipal, or county officer having jurisdiction over the issuance to issue permit, license, certificate, authorization, or other required document, as provided herein.

Section 12. State Building Construction Board of Appeals and Review. (a) There is hereby created a state building construction board of appeals and review of seven members to be appointed by the governor, including at least one member who is a registered architect or professional engineer competent in the field of building regulations, and one member who has had experience in the field of building inspection.

(b) The director shall serve as secretary of the board. The governor shall select a chairman from among the members of the board.

(c) The members of the board serve at the pleasure of the governor. The members shall receive no compensation for their services but shall be entitled to reimbursement for necessary and actual expenses incurred in their official service on the board. The board shall meet at the call of the chairman or at the written request of [three] members. The board, however, shall meet within [thirty] days following receipt of any appeal.

Section 13. Appeals Under the State Building Construction Code; Powers and Duties of the State Building Construction Board of Appeals and Review. (a) The board has exclusive and final jurisdiction of all questions of fact arising from the administration and enforcement of the state building construction code by any state agency or local building department.

(b) The board has the power on satisfactory proof, after a public hearing:

(1) To vary or modify, in whole or part, the application of any provision or requirement of the state building construction code if strict compliance with the provision or requirement would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security and equally safe and proper alternatives may be prescribed therefor.

(2) To reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency or local building department affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building construction code.

(3) To review, after disapproval or upon failure to approve within sixty days after submission, any application for permission for the construction of a building pursuant to the provisions of the state building construction code, or plans or specifications submitted in connection therewith; to reverse, modify, or annul the disapproval in whole or part; and to make a determination that the application or plans or specifications are in compliance with the provisions of such code. If this determination is made, the state, municipal, or county officer charged with the duty shall forthwith issue any permit, license, certificate, authorization, or other document required for the construction.

(c) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved at that time, and pursuant to this procedure, conditions and rules as prescribed by the board. The board may charge and collect reasonable fees therefore and makes rules governing such charges. The board shall fix a time for the hearing of an application and shall require that due notice of the time and place of the hearing be given to the applicant, the state agency or local building department involved, and other interested persons as may be concerned. Any person or a duly authorized representative of any state agency or local building department may appear at the hearing and be heard on the application.

(d) The board may subpoena all of the papers and documents constituting the record upon which the application for a variance, modification, reversal, annulment, or review is based, and the state, municipal, or county officer in charge thereof shall forthwith upon receipt of the subpoena, transmit the papers and documents to the board.

(e) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency or the local building department that a stay would involve imminent peril to life or property.

(f) The board, in hearings conducted under this section, shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

(g) Applications shall be decided on promptly. In every case the board shall state generally the reason or reasons for its decision.

(h) All decisions of the board require concurrence of at least two of its members if a minimum quorum is present to become effective.

(i) The decision of the board shall state the date on which it takes effect, and a copy thereof, duly certified by the chairman of the board, shall be filed as a public record in the office of the division and a copy thereof shall be sent to the parties and to all state agencies or local building departments affected thereby.

(j) The decision of the board shall be final as to all questions of fact. Within [thirty] days after the mailing of notice of a decision by the board, any party in interest who appeared before the board in connection with the application may petition the [insert court of original jurisdiction] in the judicial district where the building is located for the review of questions of law involved in such decision in the manner provided in [cite appropriate provisions of judicial review statute]. The petitioner shall serve a copy of the petition and the accompanying papers upon the board at least [eight] days prior to the date for which the application for relief is notices, unless a shorter time is prescribed by an order to show cause granted by the court to which application is made or a judge thereof. The board, in its discretion, may certify to the court in which the proceeding is pending questions of law involved in its decision. Such proceeding to review and the questions so certified are entitled to a preference. Appeals may be taken from the decision of the court in the manner and subject to the limitations provided in the [judicial review statute]. It is not necessary to file exceptions to the rulings of the board. Upon final determination of the proceeding to review, the board shall enter a decision in accordance with such determination.

(k) A record of all decisions of the board properly indexed shall be kept in the office of the board. The record shall be open to public inspection at all time during business hours.

Section 14. Appeals from Municipalities and Counties Not Adopting the State Building Construction Code; Powers and Duties of the State Building Construction Board of Appeals and Review.[1]

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[1] **Some states may wish to proceed with the establishment of a review board independently of taking action on a model state building code. While the necessary language will vary depending on whether the board is established in an existing agency or as an independent agency, this section will provide the basis for the powers and functions of the board. Additional language will be required to specify the relation of the board's review authority to the existing building construction regulatory authority of other agencies. Consideration must be given to the extent to which the board can overrule other state agencies and local governments.**

(a) The board shall have the authority to review, upon appeal by a person aggrieved by an order, requirement, or direction of a local or state building official, the requirements and provisions of local or state building regulations as they apply to proposed uses of materials, components, systems, or construction methods with respect to conformity with nationally recognized standards, accepted engineering practices, or state and national model codes; but review in this section does not apply to orders, requirements, or directives issued pursuant to the state building construction code.[1]

(b) Any person aggrieved by an order, requirement, or directive of a municipal or county inspector of buildings, within thirty days after the service thereof, may appeal to the board for relief. The board shall examine the matter and hear the parties within [thirty] days following receipt of any appeal, and within ten days after the hearing, may alter, annul, or affirm the order, requirement, or directive. The decision of the board has the same effect as the original order, requirement, or directive of the municipal or county inspector. If the decision annuls or alters the order, requirement, or directive of the inspector, the board shall order the inspector not to enforce his order, requirement, or directive. Copies of the decision of the board shall be transmitted to each municipality and county within this state to inform code enforcing jurisdictions that the alternative material and type or method of construction approved or disapproved, may or may not, as the case may be, be used for building construction.

(c) The board, in arriving at its decisions, shall determine whether the materials or method or system will provide adequate performance for the purposes for which the use is intended. Adequate performance shall be determined in conformity to accepted standards of engineering practice and national or state model building codes. To the extent that they are applicable, the board shall apply the standards and provisions of the state model building code.[2]

(d) In arriving at its decision, the board may adopt regulations setting forth alternatives to the materials and to the type or method of construction specified in any ordinance, rule, or regulation, in any special law applicable to a municipality or county, related to the construction, reconstruction, alteration, and repair, demolition, removal, use, or occupancy, and to the standards of materials to be used in construction, reconstruction, alteration, repair, demolition, removal, use, or occupancy, or buildings or other structures in any municipality or county. These alternatives shall provide adequate performance for the purposes for which their use is intended. Adequate performance shall be determined in conformity to accepted standards of engineering practice as to the materials and type or method of construction therein referred to. And, to the extent that they are applicable, the board shall apply the standards and provisions of the state model building code.[1] The board shall deposit a certified copy of the regulations with the [secretary of state].

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[1] This proviso will not be needed for a state considering the establishment of the board without including authority for development of a model building code.

[2] This sentence will not be applicable to a state considering establishment of a building construction board of appeals and review without including authority for development of a model building code.

(e) Upon the deposit of the regulations with the [secretary of state], the regulations shall be used in reviewing the decisions of local government officials and agencies rendered pursuant to [appropriate statutory authority permitting local governments to adopt building codes]. Copies of the regulations of the board shall be transmitted to each municipality within this state.

Section 15. Administration. (a) The examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings and the administration and enforcement of building regulations shall continue to be the responsibility of the municipalities and counties of the state. Except as otherwise expressly provided herein, the administration and enforcement of the provisions of the state building construction code are the responsibility of the municipalities and counties as prescribed by local law or ordinance. All provisions of law relating to the administration and enforcement of local building regulations in any municipality or county shall be applicable to the administration and enforcement of the state building construction code in such municipality or county.

(b) For and in aid of the administration and enforcement of the state building construction code, and in addition to and not in limitation of powers heretofore or hereunder vested in them by law, each municipality or county of the state may:

(1) Examine and approve or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building construction code, and direct the inspection of such buildings during and in the course of construction.

(2) Require that the construction of the building be in accordance with the applicable provisions of the state building construction code, subject to the powers of variance or modification granted to the board in sections 13 and 14 of this act.

(3) Order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state building construction code. Orders may be served upon the owner or his authorized agent personally or by sending by registered mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building. Any local building department, by action of an authorized officer thereof, may grant in writing such time as may be reasonably necessary for achieving compliance with the order.

(4) Issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required by building regulations or which the director

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[1] See footnote 2.

may deem necessary, desirable, or proper. A certificate of occupancy for a building constructed in accordance with the provisions of the state building construction code shall certify that such building conforms to the requirements of the building regulations applicable to it. The certificate shall be in such form as the director prescribes. Every certificate of occupancy, unless and until set aside or vacated by the board or a court of competent jurisdiction, is binding and conclusive upon all state, municipal, and county agencies, as to all matters therein set forth and no order, directive, or requirement at variance therewith may be made or issued by any other state, municipal, or county agency.

(5) Make, amend, and repeal rules for the administration and enforcement of the provisions of this section, and for the collection of reasonable fees in connection therewith, which fees shall be comparable to fees imposed or prescribed by existing local building regulations.

(6) Prohibit the commencement of construction until a permit therefore has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state building construction code.

Section 16. Injunction and Abatement of Illegal Construction. If the construction of a building is pursuant, or is purported to be pursuant to the provisions of the state building construction code, the construction or use thereof in violation of any provision of the state building construction code or any lawful order of a local building department made thereunder may be enjoined by a judge of the [insert county court of original jurisdiction] in the judicial district in which the building is located on the petition of an appropriate municipal or county officer or any other person aggrieved thereby, and the removal of the building or its abatement as a public nuisance may be ordered.

Section 17. Penalties for Violation. Any person, having been served with an order pursuant to the provisions of section 15(b)(3), who fails to comply with the order within [thirty] days after service or within the time fixed by the local building department for compliance, whichever is the greater, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building construction code or any lawful order of a local building department made thereunder shall be punishable by [a fine of not more than [five hundred] dollars, or [thirty] days in jail, or both] [civil penalty of [ ] dollars per day during the continuance of the violation].

Section 18. Local Building Regulations. (a) Nothing in this act shall be construed as prohibiting any municipality or county from adopting or enacting any building regulations relating to any building within its limits, but no municipality or county in which the state building construction code has been accepted and is applicable may have the power to supersede, void, or repeal or make more restrictive any of the provisions of this act or of the rules and regulations adopted by the division hereunder.

(b) Nothing in this act shall be construed as abrogating or impairing the power of any municipality or county or local building department to enforce the provisions of any building regulation, or the applicable provisions of the state building construction code, or to prevent violations or punish violators thereof, except as otherwise expressly provided in this act.

Section 19. Separability. **[Insert separability clause.]**

Section 20. Effective Date. **[Insert effective date.]**

STATE ASSISTANCE TO LOCAL GOVERNMENTS FOR BUILDING INSPECTION

The states have a significant responsibility to provide the framework and machinery within which the objectives of modernization and uniformity of building codes can be realized. The adoption of modern, up-to-date local building codes and competent administration and enforcement of such codes are matters of statewide concern in the protection of the health and safety of its citizens.

The report of the Advisory Commission on Intergovernmental Relations, *Building Codes: A Program for Intergovernmental Reform,* indicates those building regulatory practices of a governmental nature that tend to inhibit the advancement of housing and building technology. Among the several recommendations for federal, state, and local action are those to improve the quality of administration and personnel at the local level. The draft bill, "State Model Building Code" (35-10-00) of this publication, would encourage uniformity of building codes through local adoption of a statewide model code and establishment of a state-level appeals and review agency for interpretation of local building codes decisions. To professionalize building inspection, a draft bill, "State Licensing of Building Inspectors," appears on page 35-26-00.

The following suggested act gives the state a positive role in upgrading and improving the quality of local building code administration. It includes five assistance programs that could be undertaken by state government. The state is authorized to: provide technical and advisory assistance on the adoption, administration, and enforcement of building codes; provide financial assistance to supplement salaries of local building inspectors; provide inspection services by the state to local governments on a reimbursable basis; establish minimum staffing requirements for local building inspection services; and conduct training programs for building officials.

Section 1 sets forth briefly the purpose of the act and section 2 deals with definitions.

Section 3 authorizes establishment of technical and financial assistance to local governments. Subsection (b) empowers the state agency to provide technical assistance, on request, to local governing bodies. Such assistance could include: serving as a clearinghouse of information for the benefit of local government about the problems of building code administration and enforcement; reviewing proposed local building regulations; promoting the use of up-to-date methods for sound building inspection programs; studying the problems affecting building code programs of local government and recommending to the governor and legislature such changes as may seem necessary to strengthen local government building inspection practices.

Subsection (c) authorizes the state agency to supplement salaries of local building inspectors. Grants may be made to individual local governments for expenditures incurred for salaries of building inspectors. Recent examples of state salary supplement programs can be cited for tax assessors in Maryland and for sewage treatment plant operators who meet state technical qualifications in New York. The availability of state money for this program could be related to minimum staffing requirements as suggested in section 5 of the suggested act. The eligibility criteria to qualify for the supplement program are based on local financial resources, including income from permit fees, number of building permits issued and dollar value of construction.

Section 4 of this act authorizes the state agency to provide building inspection services on a reimbursable basis to those local governments unable to maintain satisfactory performance either because of inadequate staff or fiscal resources, or both. The state agency then bills the local government for the cost of providing inspection services. This program may be used to assure continuance of local inspection programs in cases where local governments did not meet state mandated minimum staffing requirements as authorized in section 5.

To advance the level of competence of local inspection practices, section 5 authorizes the state agency to establish minimum staffing requirements for all local governments. Such requirements may lead to some difficulties for the smaller jurisdictions if they are required to employ full-time officials. There are, however, several alternative ways in which this difficulty can be overcome. Two or more small municipalities may jointly employ a single inspector or enter into an agreement with the county for part-time employment of an inspector; or they might employ a professional consultant, or join with several other jurisdictions for the purpose of building code administration. The salary supplement program, authorized in section 3, could be utilized in some instances, to help local governments meet the state's minimum staffing requirements by making employment more attractive to qualified persons.

Section 6 authorizes the state to conduct training and educational programs on building inspection. The state agency is authorized to cooperate with associations of public officials, professional building officials organizations, university faculties, and others in formulating and administering such programs. Pre-entry and in-service training of building inspectors is an indispensable prerequisite for code enforcement programs. Competent, knowledgeable inspectors, with an established reputation for honesty and sound judgment are a priceless asset and should be considered the precondition for the ideal development of building code enforcement programs. Extension courses, correspondence courses, and seminars conducted by universities have been undertaken in a few states, such as Connecticut, New York, New Jersey, Pennsylvania, and North Carolina. These courses usually have been joint undertakings of a college or university and one of the national or state building officials organizations. Finally, in those states establishing a licensing program for building inspectors, the state licensing board and the state agency responsible for training, should cooperatively develop training programs designed to qualify candidates for an inspector's license.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Purpose. It is hereby declared to be the public policy of this state to protect the health and safety of its citizens through improved administration and enforcement of building codes. Recent advances in building technology demand increasingly expert knowledge by building officials of a wide variety of building practices and materials and place additional demands on the capabilities and resources of local governments in maintaining adequate building inspection services. It is the purpose of this act to aid local governments in the performance of their responsibilities in administering and enforcing building codes by providing state assistance, including: technical and advisory assistance in the adoption, administration, and enforcement of building codes; financial assistance to supplement salaries of local building inspectors; provision of state inspection services to local governments on a reimbursable basis; and provision of training courses in building inspection for local and state building officials. It is also the purpose of this act to assure adequate performance of building inspection services by establishing minimum staffing requirements for local government building inspection.

Section 2. Definitions. As used in this act:

(1) "Local government" means any county, city, village, or town within this state.

(2) "Agency" means [insert name of the appropriate state agency or state government].[1]

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[1] The agency charged with this function will vary from state to state. Normally, it would be located in one of the functions assigned to an existing agency responsible for building codes, local affairs, or local planning and development assistance.

(3) "Building code" means building regulations heretofore or hereafter enacted or adopted pursuant to [cite appropriate statutes enabling local governments to adopt and enforce building codes].

(4) "Certified inspector" means a person licensed to engage in the inspection of workmanship, materials, and manner of construction of buildings and structures to determine whether prescribed standards are met.[1]

Section 3. State Technical and Financial Assistance. (a) *Purpose.* It is the intent of this section to provide technical assistance to local governments in drafting, adopting, administering, and enforcing building codes and financial assistance in the form of grants to supplement salaries of local building inspection personnel.

(b) *Authorization of State Technical Assistance.* The agency is authorized and directed to provide technical and advisory assistance regarding the adoption, administration, and enforcement of building codes to local governments on request. In providing this assistance the agency is authorized and directed:

(1) To serve as a clearinghouse, for the benefit of local governments, of information concerning the problems of building code administration and enforcement.

(2) To provide, on request, advisory review of proposed local building regulations, including technical and legal evaluation.

(3) To promote the use by local governments of such methods for sound building inspection programs as modern performance-type codes and regulations, competent staffing, and inservice training.

(4) To study problems that affect building code programs of local government and to recommend to the governor and the legislature such changes as may seem necessary to maintain and strengthen local government building inspection practices.

(5) To supply, when requested, information, advice and assistance to governmental and civic groups which are studying problems of local government inspection practices.

(6) To consult and cooperate with other state agencies, with local governments and officials, and with federal agencies and officials, in carrying out the purposes of this subsection.

(c) *Salary Supplements for Local Building Code Inspectors.*[2]

(1) The agency is hereby authorized to make grants to local governments to supplement salaries of local building inspectors. Such grants shall be apportioned from appropriations made by the legislature. The agency is authorized in its discretion to make advances in anticipation of state reimbursement provided for in this subsection.

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[1] Draft legislation to provide for the licensing of building inspectors, "State Licensing of Building Inspectors," may be found on page 35-26-00.

[2] This section is primarily intended for use by states requiring local governments to employ licensed professional inspectors because of anticipated higher salary requirements resulting from a state licensing program or from state minimum staffing requirements as provided in section 5 of this act.

(2) Grants to individual local governments shall not exceed [20] percent of that amount approved by the agency as having been duly expended by the local government for the salaries of licensed professional building inspectors. Such state assistance shall be paid on account of such salary expenditures after the termination of the fiscal year of the local government and after the agency shall have determined, in accordance with this subsection that:

(i) the total of such expenditures is properly attributable to salaries, and

(ii) the application for funds complies with the qualifications for state assistance.

(3) Subject to the grant limitations established in paragraph (2) of this subsection, the agency shall, in accordance with its rules and regulations, establish criteria to determine need for and amount of such state assistance. Such criteria shall be based on measurements reflecting the added salary costs in recruitment of licensed building inspectors and meeting minimum staffing requirements established by the state.

(4) All payments of such state assistance shall be made to the local government from the state treasury upon the audit and warrant of the [insert title of appropriate state official].

(5) A local government applying for state assistance pursuant to this subsection shall submit to the agency within [60] days after the termination of the fiscal year of the local government an application in such form and containing such information as the agency shall require in order to effectuate the provisions of this subsection.

Section 4. Inspection Services on a Reimbursable Basis. (a) *Purpose.* It is the intent of this section to provide state building inspection services to those local governments unable to maintain satisfactory building inspection services because of the unavailability of adequate staff resources or because of the greater expense of maintaining services of certain local governments.

(b) *Authorization.* The agency is hereby authorized within its discretion and upon written request from a local government, to provide inspection services upon payment by the local government making the request, of the cost of such services. The agency may employ or contract for the services of personnel necessary to carry out the provisions of this section, subject to the limitations of [cite appropriate statute].

(c) *Reimbursement to Appropriation.* All monies received by the agency in payment for furnishing inspection services authorized under this section shall be deposited to the credit of the appropriation or appropriations from which the cost of providing inspection services has been paid or is to be charged.[1]

(d) *Reports.* The agency shall furnish annually to the governor [and the legislature] a report on the scope of the services so provided.

Section 5. Minimum Staffing Requirements for Local Building Departments. (a) *Purpose.* The intent of this section is to establish minimum staffing requirements for building departments of all local governments within this state with respect to enforcement and administration of building codes adopted pursuant to [cite appropriate statutes enabling local governments to adopt and enforce building code regulations] in order to assure that code enforcing jurisdictions are properly carrying out their responsibilities in the interest of public health, safety, and welfare in administering and enforcing building codes.

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[1] This subsection may require adjustment of comply with state constitutional requirements.

(b) *Authorization.* The agency is hereby authorized to make and publish rules and regulations prescribing standards with respect to the number and qualifications of personnel engaged in inspecting the workmanship, materials, and manner of construction of buildings and structures, or portions of buildings and structures, for municipal and county building departments within the state. Such standards shall be based on, but not be limited to:

(1) The volume, dollar value, and type of building construction activity and number of permits issued within the code enforcing jurisdiction.

(2) The budget and staffing, including work load, training, and experience, of the local building department.

(c) *Certification and Hearings.* The agency shall certify those local government building departments satisfactorily meeting such standards as provided in subsection (b). The agency may revoke or suspend local certification on its own motion. Hearings shall be held and appeals permitted on any such proceedings for certification or revocation of certification as provided [cite state administrative procedure act].

(d) *Failure to Meet Certification.* If the local government has not corrected those acts or omissions for which certification was refused, revoked, or suspended, the agency may, at its discretion, provide such staff services as may be necessary to carry out the purposes of this section. The agency shall bill the local government for such inspection services until such time as it is fully satisfied that all conditions imposed by the decision of refusal of certification, revocation, or suspension shall have been complied with. All monies received by the agency in payment for providing inspection services as may be required under this subsection shall be deposited to the credit of the appropriation or appropriations from which the cost of providing inspection services has been charged.

Section 6. Training Programs. (a) *Purpose.* It is the intent of this section to authorize state participation and support of training programs to maintain and strengthen the competence of building code officials by keeping building officials abreast of increasing complex advances in building technology.

(b) *Authorization.* The agency is hereby authorized to conduct or sponsor in-service and pre-entry training programs on the technical, legal, and administrative aspects of building code administration and enforcement. For this purpose it may cooperate with education institutions, local, regional, state, or national building officials organizations, and with any other appropriate professional organizations. The agency may contract for services with such institutions, governmental jurisdictions, and organizations as may be necessary in carrying out the purposes of this section.

(c) *Agency Approval of Training Programs.* The agency shall approve those training programs in which state building officials and other employees participate under the provisions of this section.

(d) *Reimbursement of Participation Expenses.* The agency may reimburse the participation expenses incurred by building officials and other employees of the state and its subdivisions whose attendance at in-service training programs is approved by the agency. Participants shall retain their [seniority, sick leave, tenure, insurance, retirement, and other fringe benefits] while in attendance at in-service training programs approved by the agency.[1]

(e) *Authorizing Leave With Pay For Training Programs.* [The [administrative head] of any agency of this state with building code regulatory responsibilities is authorized to grant leave with pay for attendance at in-service training programs approved by the agency for short periods not to exceed [ ] weeks; for longer periods up to [ ] leave with pay shall be authorized by the [administrative head] with the approval of the [governor, state personnel agency, state budget officer].]

Section 8. Separability. [Insert separability clause.]

Section 9. Effective Date. [Insert effective date.]

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[1] If general statutes do not provide adequate protection for state officials attending training programs, special provisions may be necessary.

35-26-00

STATE LICENSING OF BUILDING INSPECTORS

Adequate enforcement of building regulations is of direct concern to state governments in their exercise of the police power to protect the health and safety of their citizens. Building inspection requires technical competence to administer modern performance-type codes, and advances expected in building technology demand a more expert knowledge of a wide variety of building practices and materials. Recognizing the need for qualified personnel to meet these demands, the Advisory Commission on Intergovernmental Relations recommended in its report, *Building Codes: A Program for Intergovernmental Reform,* that professional qualifications be established for building inspectors and that they be licensed by the state.

The suggested legislation authorizes the creation of a state licensing board empowered to establish qualifications for certified building inspectors and to license candidates who establish their fitness on the basis of examinations. The bill attempts to meet objections sometimes raised regarding occupational licensing programs by: (a) clearly establishing that the primary purpose of the legislation is to protect the public health and safety and (b) making the membership of the licensing board representative of the broad public interest.

The bill establishes procedures for the certification of any person using the title of professional building inspector or certified building inspector, electrical inspector, mechanical inspector, and gives recognition to trainees. It provides that all building inspection for state or local governments be performed under the direct supervision of a certified inspector.

The proposal does not contemplate licensing persons responsible for inspection of buildings with respect to maintenance standards such as those contained in housing codes. It does require, however, that inspections of new construction, alterations, or renovations be performed by licensed inspectors. In jurisdictions where both types – maintenance and new construction – of inspections are performed by the same personnel, inspectors are required to be licensed. Where inspection staff responsibilities are separated, maintenance inspectors are exempt from the provisions of this act.

Section 3 establishes a seven-number board appointed by the governor, and serving at his pleasure. At least one of the members must be a licensed certified inspector. The chairman of the board is designated by the governor. It is suggested that the board be established in an existing state agency responsible for building regulation or in a centralized occupational licensing department if one exists, rather than creating an independent agency.

Section 4 provides that the head of the state agency in which the board is established be designated as secretary. The secretary is empowered to appoint personnel or provide staff services necessary to assure the efficient operation of the board to carry out its responsibilities. The board is required to adopt rules and regulations for the discharge of its responsibilities and all meetings must be open to the public. Section 5 specifies the penalty for illegal use of the title "certified inspector."

Five categories for licenses are established in section 6, including: professional building inspector; certified building inspector; certified electrical inspector; certified mechanical inspector; and trainees for certified inspector. While the categories reflect varying degrees of responsibility, training, and experience, the draft bill attempts to ensure open entry into the field. There are no major barriers to the right of an individual to become a certified inspector if he is acquiring experience in building inspection. Public agencies, of course, may develop training programs for sub-professional inspection personnel to encourage trainees to qualify for certification.

Section 7 establishes procedures for disciplinary action. All proceedings of the board must be conducted in accordance with the state administrative procedure act. Grounds for disciplinary action are specified in subsection 7 (c).

The board is authorized in section 8 to establish fees for examinations, issuance of licenses, and renewal of licenses. Revenue from such fees is to be deposited in the general fund of the state. Section 9 includes optional language to those states that may wish to certify automatically without examination all those persons holding positions as building inspectors at the time of the adoption of the act.

Section 10 establishes qualifications for building inspectors employed by state and local code enforcing agencies. Such persons are required to hold the appropriate certified inspector's certificate in one of the five categories specified in section 6. Finally, section 11 provides for possible judicial review of all final administrative actions of the board.

It can be expected that under a state licensing program, salaries of local building inspectors would have to be increased to attract candidates with necessary qualifications. States may also wish to consider a program of state salary supplements to accompany the adoption of licensing as authorized in the draft bill, "State Assistance to Local Governments for Building Inspection," on page 35-23-00.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Purpose. Because recent advances in building technology require expert knowledge of a wide variety of building practices and materials and because of the need for competent officials properly to carry out their responsibilities in the interest of the public health, safety, and welfare in administering and enforcing modern performance-type building codes, it is the purpose of this act to establish procedures for the certification of any person holding a position as a building inspector, electrical inspector, or mechanical inspector.[1] It is the further purpose of this act to require all persons performing duties with respect to the inspection of building construction for any state agency or department or for any political subdivision within this state to be licensed as certified inspectors as provied in this act.

Section 2. Definitions. As used in this act:

(1) "Board" means state board of building inspectors.

(2) "Building" means a structure built, erected, and framed of component structural parts, designed for the housing, shelter, enclosure, occupancy, use, and support of individuals, animals, or property of any kind.

(3) "Building inspection" is the inspecting of the workmanship, materials and manner of construction of buildings and structures and the examination and approval of plans and specifications, to determine whether prescribed standards are met by such workmanship, materials and manner of construction, [and to determine whether there is compliance with zoning, platting, and subdivision regulations].

(4) "Certified inspector" means a person licensed under this act to engage in the profession of inspecting the workmanship, materials and manner of construction of buildings and structures, or portions

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[1] Some states may wish to add additional positions.

of buildings and structures, to determine whether prescribed standards are met by such workmanship, materials and manner of construction.

Section 3. Establishment. (a) There is hereby established in the [appropriate state agency or department][1] a state board of building inspectors, which shall consist of seven members appointed by the governor to serve at his pleasure, at least one of whom shall be a certified inspector in this state. The governor shall designate one of the members as chairman.

(b) The members of the board shall serve without compensation. Each member shall receive necessary travel and other expenses incurred in the actual performance of his duties. Before entering upon the discharge of his duties, each member of the board shall take and subscribe the oath of office and file it with the [secretary of state].

Section 4. Organiation. (a) The [appropriate state official][2] shall serve as secretary to the board and shall appoint personnel or provide staff services adepquate for the efficient operation of the board to carry into effect the provisions of this act.

[(b) The board shall adopt a seal for its own use. The seal shall have the words "state board of inspectors" inscribed thereon.]

(c) The secretary shall have the care and custody of the seal. The secretary shall keep an accurate record of all proceedings of the board, which shall be open to inspection by the public at all reasonable times.

(d) The board shall adopt necessary rules and regulations for the discharge of its responsibility. All meetings of the board shall be open and public, except that executive sessions of the board may be held to discuss and prepare examination questions and to grade the examinees

(e) The [board] [appropriate state official] shall refer alleged violations to [the appropriate state official].

(f) The board may, in accordance with the provisions of [cite appropriate state administrative procedure act] adopt, amend, or repeal such rules and regulations as are reasonably necessary to govern the examinations of applicants for certification as certified inspectors.

Section 5. Application of Act. (a) It shall be unlawful for any person, on and after [effective date],[3] without possessing a valid certificate, to use the title or term, "certified inspector," or to use, without possessing such a valid certificate, the title or term "professional building inspector," "certified building inspector," "certified electrical inspector," "certified mechanical inspector," or "trainee for certified inspector" in any sign, card, listing, advertisement, or in any other manner that would imply or indicate that he is a certified inspector licensed under this act. Violation of this subsection shall constitute a misdemeanor, punishable by a fine or not less than $[ ] nor more than $[ ] or by imprisonment in the county jail not exceeding [ ], or by both such fine and imprisonment.

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[1] E.g., a department with responsibility for building codes, mechanical codes, etc., or a centralized occupational licensing department as proposed in the 1953 Program of *Suggested State Legislation* of the Council of State Governments.

[2] The head of the state agency or centralized occupational licensing department, as the case may be. See preceding footnote.

[3] Leave sufficient time to permit organization of the agency and development and administration of the initial examination under the act.

Section 6. Issuance of Certificates. (a) Subject to the rules and regulations governing examinations, a candidate for a certificate of a type issued under this act shall be entitled to an examination for such a certificate if he meets the qualifications prescribed by this section for the certificate. Before taking the examination, he shall file his application with the secretary and pay the application fee as may be established by the board.

(1) A candidate for a certificate as a "professional building inspector" shall meet one of the following qualifications:

(i) be a registered civil engineer, mechanical engineer, electrical engineer, or architect, or

(ii) have completed [four] years of technical or university training in the field of civil engineering, mechanical engineering, electrical engineering, or architecture and have had at least [two] years of building inspection experience.

(2) A candidate for a certificate as a "certified building inspector" shall have a high school education or the equivalent thereof or formal schooling and actual experience and shall also meet one of the following qualifications:

(i) have been a journeyman building trades craftsman for at least [four] years, at least [two] years of which were as a building trades craftsman foreman; and, in addition, have had at least [two] years of service as a building inspector, or

(ii) have been a journey man building trades craftsman for at least [four] years and have had at least [three] years of service as a building inspector, or

(iii) have had at least [six] years of building inspection experience.

(3) A candidate for a certificate as a "certified electrical inspector" shall have a high school education or the equivalent thereof in formal school and actual experience, and shall also meet one of the following qualifications:

(i) have been a journeyman electrician for at least [four] years, at least [two] years of which were as an electrician foreman, and in addition have had at least [two] years of service as a building inspector of electrical systems, or

(ii) have been a journeyman electrician for at least [four] years and have had at least [three] years of service as a building inspector of electrical systems, or

(iii) have had at least [six] years of experience inspecting building electrical systems.

(4) A candidate for a certificate as a "certified mechanical inspector" shall have a high school

education or the equivalent thereof in formal schooling and actual experience, and shall also meet one of the following qualifications:

(i) have been a journeyman plumber, refrigeration man, sheet metal man, or steamfitter for at least [four] years, at least [two] of which were as a foreman, and in addition have had at least [two] years service as a building inspector of plumbing, heating, ventilating, or air-conditioning systems, or

(ii) have been a journeyman plumber, refrigeration man, sheet metal man, or steamfitter for at least [four] years and have had at least [three] years service as a building inspector of plumbing, heating, ventilating, air-conditioning systems, or

(iii) have had at least [six] years of experience inspecting building, plumbing, heating, ventilating, or air-conditioning systems.

(5) A "trainee for certified inspector" shall have a high school education or the equivalent thereof in formal schooling or actual experience.

Public agencies may establish training programs for certified inspectors. The board shall promulgate rules and regulations establishing procedures for approving training programs under which trainees may acquire the necessary experience to qualify for certified inspector. A trainee acquiring inspection experiences in an approved program to qualify for certification as a certified inspector shall perform his services under the direct supervision of a certified inspector who is a holder of a certificate of the type issued in paragraphs (1), (2), (3), and (4) of this subsection. Such experience shall be deemed to meet inspection experience requirements of this subsection.

(b) The board, from time to time, may establish additional categories of inspectors and provide for the qualifications thereof as may be determined expedient and necessary.

(c) The board shall ascertain by written examination that an applicant is qualified for a certificate of the type for which he has applied by his knowledge and understanding of the work performed by inspectors in the field covered by the certificate. If the applicant's examination is satisfactory, and if the board finds that the applicant is of good moral character, upon the payment of the certificate fee fixed by this act, the secretary shall issue a certificate to the applicant, signed by the chairman and the secretary, sealed with the seal of the board, showing that the person named therein passed the examination and is entitled to practice as a designated type of certified inspector in this state, in accordance with the provisions of this act. The board may deny or refuse to issue a certificate to an applicant upon proof of the commission by the applicant of any act or omission which would constitute grounds for for disciplinary action under this act if committed by a certified inspector.

(d) The board shall keep a record of the names and addresses of all certificate holders and such additional personal data as the board may require. A proper index and record of each certificate issued shall be kept by the board. Each certificate shall contain such identifying information as the board may require. Certificates issued to practice as a certified inspector with the provisions of this act shall be periodically reviewed by the board. Certificates shall be renewable until revoked or suspended for cause. A duplicate certificate to practice as a certified inspector in place of one which has been lost, destroyed, or mutilated, shall be issued upon proper application, subject to the rules and regulations of the board. A duplicate certificate fee fixed by this act shall be charged for the issuance of such duplicate certificate.

Section 7. Discipline. (a) The board may upon its own motion, and shall upon the verified complaint in writing of any person, investigate the actions of any certified inspector, and may suspend for a period not exceeding one year, or may revoke, the certificate of any certified inspector who is found guilty of any one or more of the acts or omissions constituting grounds for disciplinary action under this act. Every accusation against a certified inspector shall be filed within a six month period, during which the inspector is within the jurisdiction employing him, after discovery of the act or omission alleged as the ground for disciplinary action, and with respect to an accusation alleging a violation of subsection (c) (8) of this section, the accusation shall be filed within a six month period, during which the inspector is within the jurisdiction employing him, after the discovery by the board of the alleged facts constituting the fraud of misrepresentation prohibited by subsection (c) (8) of this section. If any such accusation is not filed within the time provided in this subsection, no action against a certified inspector shall be commenced under the provisions of this section.

(b) All proceedings for the suspension or revocation of certificates under this act shall be conducted [in accordance with the state administrative procedure act]. The board shall have all the powers granted therein. After revocation of a certificate upon any of the grounds set forth in this act, the board may not renew or reissue such certificate; however, a person may file with the board a new application for an examination. Upon showing that all loss caused by the act or omission for which the certificate was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with, the board, at its discretion, may issue a new certificate.

(c) A certificate may be suspended or revoked if the board determines that the holder:

(1) Is practicing in violation of the provisions of this act.

(2) Has obtained the certificate by fraud or misrepresentation, or the person named in the certificate has obtained it by fraud or misrepresentation.

(3) Is impersonating a certified inspector or former certified inspector of the same or similar name, or is practicing under an assumed, fictitious, or corporate name.

(4) Has aided or abetted in practice as a certified inspector any person not authorized to practice as a certified inspector under the provision of this act.

(5) Has been guilty of fraud or deceit in practice as a certified inspector.

(6) Has been guilty of negligence or willful misconduct constituting grounds for disciplinary action in practice as a certified inspector.

(7) Has been guilty of gross incompetence.

(8) Has affixed his signature to a report of inspection or other instrument of service where no inspection has been made by him or under his immediate and responsible direction, or has permitted his name to be used for the purpose of assisting any person, not a certified inspector, to evade the provisions of this act.

(d) The conviction of a felony in connection with the practice as a certified inspector constitutes grounds for revocation or suspension of a certificate. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony is deemed to be a conviction within the meaning of this section. The board may order the certificate suspended or revoked or may decline to issue a certificate if the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or if an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the provisions of [cite appropriate section of penal code] allowing the person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

Section 8. Fees. The board may establish examination, license, and renewal fees as may be necessary to execute the purposes of this act. Such fees shall be deposited in the general revenue fund of the state.

Section 9. Temporary Provisions. (a) Notwithstanding the provisions of section 3, it is not required that there be at least one licensed certified inspector on the board during the first [four] years after the effective date of this act; however, there shall be at least one member with all the other qualifications specified in this act for a type of certificate, except a trainee for certified inspector, which is issued under this act.

(b) For the first two years subsequent to the effective date of section 10, trainees for certified inspector may credit experience acquired in inspection duties prior to effective date of section 10 toward minimum experience qualifications set forth in paragraphs (1), (2), (3), and (4) of section 6 (a).

[(c) Notwithstanding any other provisions of this act, any person holding a position upon the effective date of this act as a building inspector, electrical inspector, or mechanical inspector, or any field of inspection provided for by this act, shall be entitled to receive a certified inspector's certificate in the appropriate inspector's classification set forth in paragraphs (2), (3), and (4) of section 6 (a), if he files an application therefor.]

Section 10. Qualifications for Local and State Building Inspectors. After [appropriate date], all building inspection duties performed on behalf of any [county, city, village, borough] or of the state shall be performed by a holder of a certified inspectors' certificate pursuant to section 6 (a) (1), (2), (3), and (4) of this act. Trainees for certified inspector shall perform their services under the direct supervision of a certified inspector.

Section 11. Judicial Review. All final administrative decisions of the board hereunder shall be subject to judicial review pursuant to the laws of this state.

Section 12. Separability. [Insert separability clause.]

Section 13. Effective Date. [Insert effective date.]

35-60-00

UNIFORM RELOCATION ASSISTANCE

Relocation of persons and businesses displaced by governmental construction programs is a serious and growing problem in the United States. All indications are that this pace of displacement will accelerate with increased urbanization and the consequent mounting demands for urban services and the growth of federal, state, and local programs for the renewal of cities and the construction of roads. It has been estimated that from 1964 to 1972 the federally aided urban renewal and highway programs alone will dislocate 825,000 families and individuals and 136,000 businesses.

In a recent report, *Relocation: Unequal Treatment of People and Businesses Displaced by Governments,* the Advisory Commission on Intergovernmental Relations found great inconsistencies in provisions for relocation assistance among levels of government and among programs at the same level. As a result, a family may be displaced by a state or local public works project and receive no moving expense payments or advisory assistance, while a family across the street, displaced by a federally aided urban renewal project, is paid up to $200 for moving expenses and receives governmental help in locating a new residence.

There are serious problems even where governments make earnest efforts to provide relocation assistance. The single greatest problem in relocating families is the shortage of standard housing for low income groups, particularly non-whites, the elderly, and large families. Among business displacees, small businesses owned and operated by the elderly are major displacement casualties. Advisory assistance is of growing importance for these groups that are most seriously affected by displacement.

In preparation of its relocation study, the Advisory Commission cooperated with the U.S. Conference of Mayors in a joint survey of the problems and practices of 100 cities over 100,000 population. The survey disclosed that federally assisted urban renewal and highway activities together account for about 65 percent of the people, and about 90 percent of the businesses displaced by governmental action in urban areas. Efforts are being made in Congress to establish uniform relocation policies for all federal and federally aided programs.

Establishment of uniformity among federally aided state and local programs would still leave the problem of inconsistencies and inadequacies among other state and local programs. In December 1964, only seven states had legislation requiring any kind of relocation payments for displacements caused by state activities other than federally assisted highways. In six of the seven states, local governments as well as state agencies were required to make relocation payments. No states required advisory services.

Apart from the federally aided urban renewal and highway programs, displacement in urban areas is largely caused by local government activities: building code enforcement, public buildings, public housing, and other activities involving acquisition of real estate for public use, such as local streets, parks, and off-street parking facilities. The Advisory Commisson-Conference of Mayors survey found that less than 10 percent of the cities reporting displacement of families due to code enforcement made relocation payments, 30 percent of those making displacements due to public building construction made such payments, and less than one-third of those causing displacements by other public works activities made such payments. Similar low percentages of cities making relocation payments to businesses were reported. In general, therefore, persons displaced by state and local government action, other than federally aided projects, receive little or no relocation payments and services or receive a varying scale of payments and services, with resultant inequitable and inconsistent treatment of an increasing number of people and businesses.

State governments should assume responsibility for establishing greater consistency and equity in the relocation practices of state and local programs. The principles of fair treatment involved – as basic as those in the eminent domain law on which the process of public property taking depends – are matters of fundamental statewide concern, and therefore require legislative consideration.

The proposed legislation would establish within each state a uniform relocation policy for persons and businesses displaced by state and local programs. A displaced person would be entitled to reimbursement on the basis of either (a) actual and reasonable expenses involved in moving himself, his family, his business or farm operation, or other personal property, or (b) a fixed payment in accordance with a fixed schedule. The legislation would prescribe allowable maximums.

State or local agencies causing displacement would be required to provide a relocation assistance program which would include (1) determining the relocation needs of displacees; (2) assisting businessmen and farmers in obtaining and becoming established in suitable business locations or replacement farms; (3) supplying information about federal government assistance programs; and (4) helping to minimize hardships caused by relocation. State or local agencies would also be required to provide temporary relocation for displaced families and individuals and to provide assurance that standard housing is available or being made available that is comparable in quality, cost, and relocation to that form which they are displaced.

The governor or appropriate state agency would be given authority to establish regulations to assure that payments are reasonable and fair, that payments are made with reasonable promptness, and that there is provision for appropriate administrative review of any determination as to the eligibility for relocation payment authorized by the act.

In the interest of economy and efficiency, state agencies are authorized to use the administrative machinery of other state agencies or units of local government for making relocation payments and providing relocation services.

In cases where a local government causes displacement by a program in which the state shares part of the cost, the locality would be entitled to reimbursement for the relocation cost in the same manner, and to the same extent, as it receives reimbursement for other project costs.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to provide for uniform, fair, and equitable treatment of persons, businesses, and nonprofit organizations displaced by state and local programs."]

(Be it enacted, etc.)

Section 1. Declaration of Policy. The purpose of this act is to establish a uniform policy for the fair and equitable treatment of owners, tenants, other persons, and business concerns displaced by the acquisition of real property by state and local land acquisition programs, by building code enforcement activities, or by a program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision. Such policy shall be uniform as to (1) relocation payments, (2) advisory assistance, (3) assurance of availability of standard housing, and (4) state reimbursement for local relocation payments under state assisted programs.

Section 2. Definitions. As used in this act the term:

(1) "State agency" means any department or agency of the state;

(2) "Person" means any individual, family, or owner of a business concern or farm operation;

(3) "Nonprofit organization" means [define for state purposes; might use definition for tax exemption purposes];

(4) "Business concern" means [any firm, partnership, corporation, or nonprofit organization] not engaged in the activity of holding property for the production of income;

(5) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(6) "Unit of local government" means a county, city, or [insert names of others, such as school districts, special districts, townships, villages, authorities];

(7) "Displaced" means any required movement from real property as a result of the acquisition or imminence of acquisition of such property for a public improvement constructed or developed by or with funds provided, in whole or part, by the state or local units of government or pursuant to a governmental program of building code enforcement or voluntary rehabilitation.

Section 3. Relocation Payments. **(a) If the state or any unit of local government acquires real property for public use, it shall make fair and reasonable relocation payments to displaced persons and business concerns as required by this act.**

(b) A relocation payment to a displaced person shall be (1) for actual and reasonable expenses in moving himself, his family, business, farm operation, or other personal property, and in the case of a farm operation, for actual and reasonable expenses in searching for a replacement farm, or (2) a fixed payment in accordance with a schedule of fixed amounts approved by the [governor].

(c) Relocation payments shall not exceed $[ ] in the case of an individual or family, $[ ] in the case of a business concern or nonprofit organization, and $[ ] in the case of a farm operation; provided that such amounts may be exceeded where necessary to secure maximum participation in a program financed in whole or in part by federal funds.

Section 4. Relocation Assistance Programs. **(a) When any state agency or unit of local government acquires real property for public use, it shall assure that a relocation assistance program for displaced persons and business concerns, offering the services herein prescribed, is available to reduce hardship to those affected, and to reduce delays in public improvements. If the state agency or local unit of government determines that other persons, business concerns, or nonprofit organizations occupying property adjacent to the real property acquired are caused substantial economic injury because of the public improvement for which property is acquired, it may provide such persons or business concerns relocation services under such programs.**

(b) Each relocation assistance program required by subsection (a) shall include such measures, facilities, or services as may be necessary or appropriate in order (1) to determine the needs of displaced

persons, business concerns, and nonprofit organizations for relocation assistance; (2) to assist owners of displaced business concerns and farm operations in obtaining and becoming established in suitable business locations or replacement farms; (3) to supply information concerning programs of the Federal Government offering assistance to displaced persons and business concerns; (4) to assist in minimizing hardships to displaced persons in adjusting to relocation; and (5) to secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

Section 5. Assurance of Availability of Standard Housing. If any state agency or unit of local government acquires real property for public use, it shall provide a feasible method for the temporary relocation of families and individuals displaced from the property acquired, and assurance that there are or are being provided, in areas not generally less desirable in regard to public utilities and public and commercial facilities, and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings equal in number to the number of displaced families and individuals and available to such displaced families and individuals and reasonably accessible to their places of employment.

Section 6. Authority of the [insert governor or name of supervising state agency.]

(a) The [governor or state agency] shall make such regulations as may be necessary to assure:

(1) that relocation payments authorized by section 3 are fair and reasonable;

(2) that a displaced person, business concern, or nonprofit organization that makes proper application for a relocation payment authorized by section 3(b)(1) is, if personal property is disposed of and replaced for use at the new location, paid an amount equal to the reasonable expenses that would have been required in moving such personal property to the new location;

(3) that a displaced person, business concern, or nonprofit organization making proper application for and entitled to receive a relocation payment authorized by this act is paid promptly after the relocation;

(4) that a displaced person, business concern, or nonprofit organization has a reasonable time from the date of displacement in which to apply for a relocation payment authorized by this act.

(b) In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the [governor or state agency] may require that any state agency make relocation payments or provide relocation services or otherwise carry out its functions under this act, by utilizing the facilities, personnel, and services of any other state agency or unit of local government, or by entering into appropriate contracts or agreements with any state agency or unit of local government having an established organization for conducting relocation assistance programs.

(c) The [governor or head of state agency] may make other necessary rules and regulations to carry out the purposes of this act.

Section 7. Local Government Programs. Units of local government may make relocation payments, provide relocation services, or otherwise carry out their functions under this act by entering into appropriate contracts or agreements with any state agency or unit of local government having an established organization for conducting relocation assistance programs.

Section 8. Fund Availability. Funds appropriated or otherwise available to any state agency or unit of local government for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this act as applied to that program or project.

Section 9. State Participation in Cost of Local Relocation Payments and Services. If a unit of local government acquires real property, and state financial assistance is available to pay the cost, in whole or part, of the acquisition of such real property, or of the improvement for which such property is acquired, the cost to the unit of local government of providing the payments and services prescribed by this act shall be included as part of the costs of the project for which state financial assistance is available to such unit of local government, and shall be eligible for state financial assistance in the same manner and to the same extent as other project costs.

Section 10. Displacement by Code Enforcement or Voluntary Rehabilitation. A person who moves his business concern or other personal property, or moves from his dwelling as the direct result of code enforcement activities, or a program of voluntary rehabilitation of buildings conducted pursuant to a governmental program, is deemed to be a displaced person for the purposes of this act.

Section 11. Appeal Procedure. Any person or business concern aggrieved by final administrative determination concerning eligibility for relocation payments authorized by this act may appeal such determination to the [insert county court of original jurisdiction] in which the land taken for public use is located or in which the code or voluntary rehabilitation program is conducted.

Section 12. Separability. [Insert separability clause.]

Section 13. Effective Date. [Insert effective date.]

LOW-RENT HOUSING FOR LOW-INCOME FAMILIES

In most metropolitan areas throughout the country the central city is making strong efforts to strengthen and renew its deteriorating and blighted neighborhoods. In many county and suburban areas, which surround these central cities, the problems are not yet so formidable, although they are likely to become so as the suburbs grow, particularly the older ones whose industry and residential character is becoming more like the central cities they border.

All but two states have legislation authorizing the provision of low-rent housing by municipalities. Forty-two states enable counties to provide low-rent housing for families of low income, but according to the best information available, suburban participation in public housing programs has been limited in spite of the large number of states authorizing such projects.

Notwithstanding the relatively small amount of current county and suburban activity, low-rent housing programs are needed and should be carried out in all parts of most of our metropolitan areas. The Advisory Commission on Intergovernmental Relations has recommended:

That states enact legislation authorizing counties in metropolitan areas to provide urban renewal and public housing services to unincorporated areas and small municipalities; and further provide for financial and technical assistance to the counties as well as municipalities for establishing such services and coordinating their administration, especially in multi-county metropolitan areas.[1]

Increased county responsibility for low-rent housing programs would tend to broaden the area of jurisdiction by including unincorporated areas that do not have programs of their own. Cooperation between counties and city housing agencies, and even joint city-county programs in certain cases, would be mutually advantageous. Such cooperation is fairly common where county programs now exist.

County low-rent housing powers would not exclude continued exercise of similar powers by municipal governments and, to the contrary, might facilitate the programs of small municipalities which could not maintain full professional staffs of their own or provide adequate relocation housing within their own borders. Large municipalities within counties, expecially major central citites, will undoubtedly want to continue using their own highly developed staffs, with the counties performing services and sponsoring low-rent housing projects only in unincorporated areas. Where central city housing staff is available, a county might find it advantageous to contract with it for staff services. The indispensable role of the counties is that of project sponsor and provider of workable program certification in unincorporated areas where there is no other government capable of performing this role.

Many counties, both within and outside metropolitan areas, may have large rural populations that might resist having the county provide low-rent housing services. Residents of a municipality having an active housing program of its own might also resist contributing to a county program out of general county revenues. In such situations, the Commission has recommended that it may be appropriate to create a county subordinate tax area in order to administer and finance a needed service in the selected area. At least 20 states currently utilize the subordinate taxing area device to provide governmental services. Draft legislation establishing county subordinate taxing areas may be found on page 31-43-00.

State programs of technical and financial assistance can do much to encourage needed low-rent housing programs in small suburban jurisdictions and outlying unincorporated areas. Kentucky and Maine, for example,

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[1] Advisory Commission on Intergovernmental Relations, *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*, (Washington: U.S. Government Printing Office, 1965), p. 114.

provide localities with staff assistance to prepare local workable programs needed to qualify for federal urban renewal and low-rent housing grants and to advise local officials on planning and carrying out their programs. The state might also stimulate local programs by matching the local share of costs. Where the establishment of a local housing agency in small municipalities and unincorporated areas is impractical, the state itself might undertake this responsibility.

States already authorizing municipalities and counties to undertake low-rent housing for low-income families may still find it useful to review the following draft bill for two reasons. First, the bill contains clarifying language concerning the eligibility of local activities for federal assistance for programs of low-rent housing in private accommodations under the provisions of the Housing and Urban Development Act of 1965. Existing state low-rent housing laws may require amendatory legislation in order for states and localities to receive the full benefits from the federal program.

Second, the draft legislation places the housing responsibility in the hands of the general-purpose unit of government rather than in a separate authority. This statutory approach differs from most existing state legislation where housing powers are exercised by independent housing authorities. The governing body may exercise its housing powers through a board or a commissioner or through such offices of a municipality or county as it may be resolution determine. Inter-county or county-municipal arrangements may also be utilized to provide low-rent housing. If the local governing body itself does not choose to exercise low-rent housing powers, it may have such powers carried out by an urban renewal agency or by the low-rent housing authority, if one exists or is subsequently established in the community. The housing authority or agency then is vested with all the housing powers in the same manner as though all powers were vested in the local governing body. The authority or agency, however, is given limited autonomy. It cannot proceed with a housing project without approval of the project by the local governing body.

The bill would permit political subdivisions to enter into interlocal agreements to jointly or cooperatively undertake low-rent housing activities. The initiative in such joint undertakings is left with the localities themselves.

So that states may assume an appropriate role, provision is made for state technical and financial assistance to municipalities and counties in planning and carrying out low-rent housing activities.

In some states it may be desirable to authorize a state agency to exercise the powers given to municipalities and counties under this act. The state could then undertake urban renewal projects in small communities and unincorporated areas where carrying out a program would otherwise be impracticable or impossible. Any state, wishing to follow this course, might add appropriate provision to the suggested act. In this case, a finding should be added to section 1 of the act and a new section drafted specifying appropriate procedures to carry out this function.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion:
"An act providing for municipalities and counties to undertake low-rent
housing for low-income families."]

(Be it enacted, etc.)

Section 1. Declaration of Policy and Purpose. It is hereby declared to be the policy of this state to promote the general welfare of its citizens to remedy unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural areas, that are injurious to the health, safety, and morals of the residents of the state. It is the policy of the state to make adequate provision of housing for persons of low income, for elderly persons of low income, for persons of low income who are displaced in the rehabilitation, clearance, or redevelopment of slums and blighted areas or as the result of other governmental action, and for veterans of low income who are unable to provide themselves with decent housing on the basis of benefits available to them through certain government guarantees of loans for purchase of residential property. The provision of safe and sanitary dwelling accommodations at rents or prices which persons of low income can afford will materially assist municipalities and counties in developing more desirable neighborhoods and alleviating poverty in this state. It is the purpose of this act to enable municipalities and counties to meet these problems by providing low-rent housing for low-income persons and to encourage cooperation between political subdivisions thereby making available low-rent housing facilities in all areas of the state. It is also the purpose of this act to provide state technical services and financial assistance to municipalities and counties unable to provide low-rent housing for families of low income.[1]

Section 2. Definitions. The following terms, wherever used or referred to in this act, have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" or "authority" means any public body corporate and politic created by, or pursuant to, this act.

(2) "Municipality" means any [city, village, borough, or town], but not a county.

(3) "County" means any county in the state.

(4) "Public body" means the state and any municipality or county; and any commission, district, authority, agency, subdivision or any department, agency, instrumentality, corporate or otherwise, of any of the foregoing.

(5) "Governing body" means the [council] or [board of commissioners] or other legislative body charged with governing the municipality or county, as the case may be.

(6) "Mayor" means the mayor of the municipality or the officer thereof charged with the duties customarily imposed on the mayor or executive head of a municipality.

(7) "County chairman" means the presiding officer of a county governing board.

(8) "Clerk" means the municipal clerk or the county clerk, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

(9) "Federal government" means any department, agency, or instrumentality, corporate or otherwise, of the United States of America.

(10) "Area of operation" means (i) in the case of a municipality, the area within its boundaries, (ii) in the case of a county, the area within its boundaries, (iii) in the case of combined operations of any of the foregoing, the area comprising the operating area of all the municipalities and counties so

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[1] If state financial assistance is not to be included in this bill, this sentence should be omitted.

combining, and (iv) in the case of a housing authority, all the area of operation of the municipality or county, or the combined areas of two or more municipalities and counties, for which the housing authority is established.

(11) "Slum" means any area where dwellings predominate which by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or any combination of these factors, are detrimental to safety, health, and morals.

(12) "Housing project" or "project" means any work or undertaking (on contiguous or noncontiguous sites): (1) to demolish, clear, or remove buildings from any slum area; or (ii) to provide, or assist in providing (by any suitable method, including but not limited to: rental; sale of individual units of single or multifamily structures under conventional, condominium, or cooperative sales contract; lease-purchase agreement; loans; or subsidizing of rentals or charges), decent, safe and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income; or (iii) to accomplish a combination of the foregoing. This work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances; streets, sewers, water service, utilities, parks, site preparation and landscaping and facilities for administrative, community, health, recreational, welfare, or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and other improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements and all other work in connection therewith; and the term includes all other real and personal property and all tangible assets held or used in connection with the housing project.

(13) "Persons of low income" means persons or families who (as determined by the public body undertaking a project) cannot afford to pay the amounts at which private enterprise unaided by public subsidy is providing a substantial supply of decent, safe, and sanitary housing.

(14) "Bonds" means any notes, interim certificates, debentures, or other obligations issued pursuant to this act.

(15) "Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.

(16) "Obligee" means any bondholder, agent, or trustee for any bondholder, or lessor demising property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract respecting the project.

(17) "Persons engaged in national defense activities" means persons in the armed forces of the United States, employees of the Department of Defense of the United States, and workers engaged or to be

engaged in activities connected with national defense. The term also includes the families of the persons, employees, and workers who reside with them.

(18) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which, in the determination of the governing body is of sufficient severity and magnitude to warrant the use of available resources of the federal, state, and local governments to alleviate the damage, hardship, or suffering caused thereby.

(19) "Elderly" means a person who meets the age, disability or other conditions established by regulation of the municipality or county.

(20) "Handicapped" means a person whose functioning is substantially impaired, as determined in accordance with regulations established by the municipality or county.

(21) "Board" or "Commission" means a board, commission, department, division, office, body or other unit of the municipality or county or combinations of either or both of the foregoing, authorized to provide low-rent housing for low-income families.

Section 3. Finding of Necessity by Local Governing Body. No municipality or county shall exercise the authority thereafter conferred upon municipalities and counties by this act until after its governing body shall have adopted a resolution finding that (1) insanitary or unsafe inhabited dwelling accommodations exist in the municipality or county, or (2) there is a shortage of safe and sanitary dwelling accommodations in the municipality or county available to persons of low income at rentals or prices they can afford.

Section 4. Powers. Every municipality and county shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(1) To prepare, carry out, and operate projects and to provide for the acquisition, construction, reconstruction, rehabilitation, improvement, extension, alteration, or repair of any project or any part thereof, and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(2) To undertake and carry out studies and analysis of housing needs within its area of operation and ways of meeting such needs (including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages, and other factors affecting the local housing needs and the meeting thereof) and to make the results of such studies and analyses available to the public and the building, housing and supply industries; to engage in research and disseminate information on housing and slum clearance; to determine where slum areas exist or where there is unsafe, insanitary or overcrowded housing; to make studies and recommendations relating to the problem of clearing, replanning, and reconstructing of slum areas and the problem of

eliminating unsafe, unsanitary, or overcrowded housing and providing dwelling accommodations and maintaining a wholesome living environment for persons of low income; and to cooperate with any public body in action taken in connection with such problems.

(3) To utilize, contract with, act through, assist, and cooperate or deal with any person, agency, institution, or organization, public or private, for the provision of services, privileges, works, or facilities for, or in connection with, its projects; and (notwithstanding anything to the contrary contained in this act or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract awarded or entered into in connection with a project, stipulations requiring that the contractor and all subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, nondiscrimination in employment as to race, religion, color, or national origin, and comply with any conditions attached to the financial aid of the project.

(4) To lease, rent, sell, or lease with option to purchase any dwellings, accommodations, lands, buildings, structures, or facilities embraced in any project and (subject to the limitations contained in this act with respect to the rental of or charges for dwellings in housing projects) to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein, to acquire by the exercise of the power of eminent domain any real property or interest therein; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to make loans for the provision of housing for occupancy by persons of low income; to insure or provide for the insurance, in stock or mutual companies, of any real or personal property or operations of the municipality or county against any risks or hazards; to procure or agree to the procurement of government insurance or guarantees of the payment of any bonds or parts thereof issued by the municipality or county, including the power to pay premiums on any such insurance.

(5) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than such redemption price, all bonds so redeemed or purchased to be cancelled.

(6) To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examination of witnesses who are outside the state or unable to attend before the municipality or county, or excused from attendance; to make available to appropriate agencies

(including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property if conditions exist which are dangerous to the public health, morals, safety, or welfare.

(7) To prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations, and others) displaced from a housing project site, and to make relocation payments to or with respect to these persons for moving and readjustment expenses and losses of property for which reimbursement of compensation is not otherwise made, including the making of relocation payments financed by the federal government.

(8) To exercise all or any part or combination of powers herein granted.

Section 5. Application of General Law. No provision of law with respect to the acquisition, operation or disposition of property by public bodies shall be applicable to a municipality or county exercising powers hereunder unless the legislature shall specifically so state.

Section 6. Area of Operation. (a) The area of operation of any municipality, county, or housing authority may be increased to include additional contiguous areas upon the request or consent, by resolution, of the governing body of the municipality or county within which the additional area lies.

(b) No county, counties operating jointly, or housing authority established therefor, shall undertake any housing project within the boundaries of any municipality unless a resolution shall have been adopted by the governing body of the municipality (and by any housing authority which shall have been theretofore established and authorized to exercise powers hereunder in the municipality) declaring that there is need for the county, combined counties, or housing authority, as the case may be, to exercise powers under this act within that municipality.

Section 7. Cooperation Among Municipalities and Counties.[1] (a) Any power or powers, privileges, or authority exercised or capable of exercise by a municipality or county under this act may be exercised or enjoyed jointly with any other municipality or county, including but not limited to the financing (including the issuance of bonds and giving security therefore), exercise of the power of eminent domain, planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects located within the area of operation of any one or more of the municipalities or counties.

(b) For the purpose of taking joint action authorized by this section, a municipality or county by resolution may authorize any other municipality or county so joining or cooperating with it to act on its behalf with respect to any or all powers, as its agent or otherwise, in the name of the municipality or county or combination thereof so joining or cooperating or in its own name.

[1] Section 5 constitutes one method of authorizing two or more municipalities, counties, or combinations of municipalities and counties, to undertake housing projects. It is possible that states which already have a general interlocal cooperation act would not need this specific authorization. Another method would be a separate regional housing law. Each state must carefully consider its own constitutional and legal requirements in determining which method to use. Additionally, local counsel should be consulted particularly concerning bond issuances and other financing problems.

(c) Municipalities and counties joining or cooperating under the provisions of this section may elect to create a single housing authority to exercise their powers under this act, if each of the governing bodies thereof by resolution determines such action to be in the public interest. If determination is made, the housing authority shall be established in accordance with section 9 of this act and shall thereupon be vested with the same powers of the municipalities and counties so joining or cooperating as are vested in a housing authority by a single municipality or county electing to have its powers exercised by the housing authority as provided in section 8 of this act.

Section 8. Operation of Housing Not for Profit. No municipality or county shall construct or operate any housing project for profit, or as a source of revenue to the municipality or county. Each municipality and county shall manage and operate its housing project in an efficient manner so as to enable it to fix the rentals or payments for dwelling accommodations at low rates consistent with its providing decent, safe and sanitary dwelling accommodations for persons of low income. To this end a municipality or county shall fix the rentals or payments for dwellings in its projects at no higher rates than it finds to be necessary in order to produce revenues which (together with applicable other available moneys, revenues, income and receipts of the municipality and county from whatever sources derived, including federal financial assistance necessary to maintain the low-rent character of the projects) will be sufficient (1) to pay, as the same become due, the principal and interest on its bonds; (2) to create and maintain such reserves as may be required to assure the payment of principal and interest as may become due on its bonds; (3) to meet the cost of, and to provide for, maintaining and operating the projects (including necessary reserves therefor and the cost of any insurance) and the administrative expenses relating to its housing projects; and (4) to make such payments in lieu of taxes and, after payment in full of all obligations for which federal annual contributions are pledged, to make such repayments of federal and local contributions as it determines are consistent with the maintenance of the low-rent character of projects. Rentals or payments for dwellings shall be established and the projects administered, insofar as possible, to assure that any federal financial assistance required shall be strictly limited to amounts and periods necessary to maintain the low-rent character of the projects. Nothing herein shall be construed to limit the amount which may be charged for nondwelling facilities. All such income, together with other income and revenue derived through operations under this act, shall be used in the operation of the projects to aid in accomplishing the public, governmental, and charitable purposes of this act.

Section 9. Tenant Eligibility. A municipality or county shall issue regulations establishing eligibility requirements, consistent with the purposes and the objectives of this act, for admission to and continued occupancy in its projects.

Nothing contained in this or the preceding section shall be construed as limiting the power of a municipality or county with respect to a housing project, to vest in an obligee the right, in the event of a default to take possession or cause the appointment of a receiver thereof, free from all the restrictions imposed by this or the preceding section.

Section 10. Dwellings Designed Specifically for the Elderly and the Handicapped. For the purpose of increasing the supply of low-rent housing and related facilities for the elderly, and for handicapped persons of low income, a municipality or county may exercise any of its powers under this act in projects involving dwelling accommodations designed specifically for these persons. In respect to dwelling units in any projects suitable to the needs of elderly or of handicapped persons, special preference may be extended in admission to those dwelling units to these persons of low income.

[Section 11. Dwellings for Disaster Victims and Defense Workers. Notwithstanding the provisions of this or any other act relating to rentals of, preferences or eligibility for admission to, or occupancy of dwellings in housing projects, during the period the municipality or county, as the case may be, determines there is acute need for housing to assure the availability of dwellings for victims of a major disaster, it may undertake the development and administration of housing projects for the federal government, and dwellings in any housing project under its jurisdiction may be made available to victims of a major disaster. A municipality or county is authorized to contract with the federal government or a public body for advance payment or reimbursement for the furnishing of housing to victims of a major disaster, including the furnishing of the housing free of charge to needy disaster victims during any period covered by a determination of acute needs as herein provided.]

Section 12. Tax Exemption and Payments in Lieu of Taxes. The property of a municipality or county acquired or held pursuant to this act is declared to be public property used for essential public, governmental purposes and such property is exempt from all taxes (including sales and use taxes) and special assessments of any public body; but this tax exemption does not apply to any portion of a project used for a profit-making enterprise, but in taxing such portions appropriate allowance shall be made for any expenditure by a municipality or county for utilities or other public services which it provides to serve the property. In lieu of taxes on property exempt under this section, a municipality or county may agree to make such payments to any public body (including itself) as it finds consistent with the maintenance of the low-rent character of housing projects and the achievement of the purpose of this act.

Section 13. Planning, Zoning and Building Laws. All projects of a municipality or county are subject to the planning, zoning, sanitary and building laws, ordinances, and regulations applicable to the locality in which the project is situated.

Section 14. Bonds.[1] A municipality or county may issue bonds from time to time in its discretion for the purpose of the housing of persons of low-income. It may issue refunding bonds for the

[1] In some states, municipalities and counties may already have adequate statutory bonding powers which can be used for low-rent housing purposes. In these cases, these bonding powers could be incorporated by reference in this bill. Local counsel should be consulted concerning the legal acceptability of this method.

purpose of paying or retiring bonds previously issued by it. It may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable: (1) exclusively from the income and revenues of the project financed with the proceeds of such bonds; or (2) exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or in part with the proceeds of the bonds. Any such bonds may be additionally secured by a pledge of any loan, grant, or contributions, or parts thereof, from the federal government or other source, or a pledge of any income or revenues connected with a housing project.

Neither the governing body nor any person executing the bonds is liable personally on the bonds by reason of the issuance thereof. The bonds issued under the provisions of this act (and the bonds shall so state on their face) shall be payable solely from the sources provided in this section and shall not constitute an indebtedness of the municipality or county within the meaning of any constitutional or statutory debt limitation or restriction and shall not under any circumstances become general obligations of the municipality or county. Bonds issued pursuant to this act are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, are exempt from taxes. The tax exemption provisions of this act shall be considered part of the contract for the security of bonds and shall have the force of contract, by virtue of this act and without the necessity of the same being restated in the bonds, between the bondholders and each and every one thereof, including all transferees of the bonds from time to time on the one hand, and a municipality or county and the state on the other.

Section 15. Form and Sale of Bonds. Bonds issued pursuant to this act shall be authorized by resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as the resolution or its trust indenture may provide.

The bonds may be sold at public or private sale at not less than par.

If any of the officers of a municipality or county whose signatures appear on any bonds or coupons cease to be such officers before the delivery of the bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if the officers had remained in office until the delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

In any suit, action, or proceeding involving the validity of enforceability of any bond issued pursuant to this act or the security therefor, any bond reciting in substance that it has been issued by the municipality or county to aid in financing a project shall be conclusively deemed to have been issued for such purposes and the project shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of this act.

Section 16. Provisions of Bonds and Trust Indentures. In connection with the issuance of bonds or the incurring of obligations under lease and in order to secure the payment of the bonds, a municipality or county, in addition to its other powers, has the power:

(1) To pledge all or any part of its gross or net rents, fees, or revenues of a housing project, financed with the proceeds of the bonds, to which its right then exists.

(2) To mortgage all or any part of its real or personal property, then owned.

(3) To covenant against pledging all or any part of its rents, fees, and revenues, or against mortgaging all or any part of its real or personal property, acquired or held pursuant to this act, to which its right or title then exists, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(4) To covenant as to the bonds to be issued and as to the issuance of the bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed, or multilated bonds? to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof.

(5) To covenant (subject to the limitations contained in this act) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in the funds.

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the proportion of outstanding bonds the holders of which must consent to such action, and the manner in which such consent may be given.

(7) To covenant as to the use, maintenance, and replacement of any or all of its real or personal property acquired pursuant to this act, the insurance to be carried thereon, and the use and disposition of insurance moneys.

(8) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and

terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(9) To vest in any of its obligee or any specified proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in such obligee the right in the event of a default by the municipality or county to take possession of and use, operate, and manage any project or any part thereof or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with its agreement with the obligee; to provide for the powers and duties of the obligees and to limit theliabilities thereof; and to provide the terms and conditions upon which the obligees may enforce any covenant or rights securing or relating to the bonds.

(10) To exercise all or any part or combination of the powers herein granted; to make such covenants (other than in addition to the covenants herein expressly authorized) and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of the municipality or county as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated herein.

Section 17. Construction of Bond Provisions. This act, without reference to other statute of the state, constitutes full authority for the authorization and issuance of bonds hereunder. No other laws with regard to the authorization or issuance of bonds or the deposit of the proceeds thereof, that requires a bond election or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto.

Section 18. Remedies of an Obligee. An obligee of a municipality or county has the right in addition to all other rights which may be conferred on the obligee, subject only to any contractural restrictions binding upon the obligee:

(1) By mandamus, suit, action, or proceeding at law or in equity to compel a municipality or county and the officers, agents, or employees thereof to perform each and every term, provision and covenant contained in any contract of the municipality or county with or for the benefit of the obligee, and to require the carrying out of any or all such covenants and agreements of the municipality or county and the fulfillment of all duties imposed by this act.

(2) By suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of obligee of the municipality or county.

Section 19. Additional Remedies Conferrable by the Municipality or County. A municipality or county has power, by its resolution, trust indenture, mortgage, lease or other contract, to confer upon any obligee the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in the resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any project or any part thereof to be surrendered to any such obligee.

(2) To obtain the appointment of a receiver of any project of the municipality or county or any part thereof and of the rents and profits therefrom. If a receiver is appointed, he may enter and take possession of such project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the municipality or county as the court shall direct.

(3) To require the municipality or county and the officers, agents, and employees thereof to account as if it and they were the trustees of an express trust.

Section 20. Exemption of Property from Execution Sale. All property, including funds, acquired or held by a municipality or county pursuant to this act shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the property, nor shall any judgment against the municipality or county be a charge or lien upon such property, but the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the municipality or county on its rents, fees or revenues or the right of the federal government to pursue any remedies conferred upon it pursuant to the provisions of this act. A municipality or county may waive its exemption hereunder with respect to claims against any profit-making enterprise occupying any portion of a project, provided that such waiver does not affect or impair the rights of any obligee of the municipality or county.

Section 21. Aid from Federal Government. In addition to the powers conferred upon a municipality or county by other provisions of this act, a municipality or county may borrow money or accept contributions, grants, or other financial assistance from the federal government for or in aid of any project or related activities concerning health, welfare, economic, educational, environmental, and similar problems of persons of low income, to take over or lease or manage any project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such contracts, covenants, mortages, trust indentures, leases, or agreements as necessary, convenient, or desirable. It is the purpose and intent of this act to authorize any municipality or county to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the provision of decent, safe, and sanitary dwellings and maintaining a wholesome living environment for persons of low income by the municipality or county. To accomplish this purpose a municipality or county, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government any provisions which the federal government may require as conditions to its financial aid not inconsistent with the purposes of this act.

Section 22. Transfer of Possession or Title to the Federal Government. In any contract with the federal government for annual contributions to a municipality or county the municipality or county may obligate itself (which obligation shall be specifically enforceable and shall not constitute a mortgage notwithstanding any other laws) to convey to the federal government possession of or title to the project to which the contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants and conditions to which the municipality or county is subject; the contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project and funds in accordance with the terms of such contract; but if the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project with thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the municipality or county the project as then constituted.

Section 23. Eminent Domain. A municipality or county has the right to acquire by the exercise of the power of eminent domain any real property or interest therein which it may deem necessary for its purposes under this act after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. A municipality or county may exercise the power of eminent domain in the manner provided in [insert appropriate statutory citation], and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may hereafter be provided by any other statutory provisions for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to any public body may be acquired without its consent.

Section 24. Cooperation in Undertaking Projects. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of projects located within its jurisdiction, any public body may upon such terms, with or without consideration, as it determines:

(1) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a municipality or county, or to the federal government.

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with such projects.

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways,

alleys, sidewalks, or other places which it is otherwise empowered to undertake.

(4) Plan or replan, zone or rezone any parts of such public body; make exceptions from building regulations and ordinances; make changes in its map.

(5) Cause services to be furnished to a municipality or county of the character which such public body is otherwise empowered to furnish, and provide facilities and services (including feeding facilities and services for tenants), for or in connection with housing projects.

(6) Enter into agreements with respect to the exercise by such public body of its powers relating to the repair, improvement, condemnation, closing or demolition of unsafe, insanitary, or unfit buildings.

(7) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such projects.

(8) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this act.

(9) Enter into agreements (which may extend over any period notwithstanding any provision or rule of law to the contrary), with a municipality or county respecting action to be taken by such public body pursuant to any of the powers granted by this act. If title to or possession of any project is held by any public body or governmental agency authorized by law to engage in the development or administration of low-rent housing or slum clearance projects, including any agency or instrumentality of the United States of America, the provisions of such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency.

Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement, or public bidding, notwithstanding any other laws to the contrary.

Section 25. Agreements as to Payments by a Municipality or County. In connection with any project of a municipality or county located wholly or partly within the area in which any public body is authorized to act, any public body may agree with the municipality or county with respect to the payment by the municipality or county of such sums in lieu of taxes for any year or period of years as are determined by the municipality or county to be consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this act.

Section 26. Other State and Local Aid. In addition to other aids provided herein, any public body is empowered to provide financial aid in connection with a housing project by loan, donation, grant, contribution, and appropriation of money; by abatement or remission of taxes, or payments in lieu of taxes, or other charges; or by any other means.

Section 27. Housing Bonds; Legal Investments and Security. The state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations and savings and loan associations, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any moneys or funds belonging to them or within their control in any bonds issued pursuant to this act or issued by any public housing authority or agency in the United States, any of its Territories, the District of Columbia, Puerto Rico, Guam, or the Virgin Islands, when such bonds are secured by a pledge of annual contributions or other financial assistance to be paid by the United States government or any agency thereof, or when such bonds are secured by an agreement between the United States government or any agency thereof and the municipality, county, public housing authority, or agency in which the United States government or any agency thereof agrees to lend to the municipality, county, public housing authority, or agency, prior to the maturity of the bonds, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on the bonds) will suffice to pay the principal of the bonds or other obligations with interest to maturity, which moneys under the terms of the agreement are required to be used for this purpose, and such bonds shall be authorized security for all public deposits and shall be fully negotiable in this state; it being the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations, but nothing contained in this section shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. The provisions of this section shall apply notwithstanding any restrictions on investments contained in other laws.

Section 28. Exercise of Powers. (a) A municipality or county may itself exercise it housing project powers (as herein defined) or may, if its governing body determines such action to be in the public interest, establish a housing authority pursuant to section 29 or established heretofore under the provisions of [cite appropriate state act] and elect to have these powers exercised by it. If the governing body makes such a determination and establishes a housing authority, it shall be vested with all of the housing project powers in the same manner as though all these powers were conferred on the housing authority instead of the municipality or county or if the governing body does not elect to make the foregoing determination, the municipality or county in its discretion may exercise its housing project powers through a board or commission or through such officers as its governing body may be resolution designate, except that the following functions must be exercised by the municipality or county itself: (i) The findings required to be made as provided in section 4; (ii) the power to approve a housing project; (iii) the powers relating to cooperation among municipalities and counties under section 6; (iv) the powers of municipalities and counties under subsection (a) of this section; and (v) the power to establish a housing authority under the provisions of sections 29 and 30.

Section 29. Creation of Housing Authorities. (a) *Municipal and County Authorities.* There may be created in each municipality and county a public body corporate and politic to be known as the "housing authority" of a municipality or county.

(b) *Authorities for Municipalities or Counties, or Combinations thereof, Joining or Cooperating.* If the governing body of each of two or more municipalities or counties, or combinations of municipalities and counties, has made the finding prescribed in section 3, has taken the necessary action to cooperate with one another as provided in section 7, and has elected as provided in section 28 to have its housing project powers exercised by a housing authority created for all the municipalities or counties so joining or cooperating, a public body corporate and politic to be known as a regional housing authority shall thereupon exist for all these municipalities or counties, or combinations thereof. Additional municipalities or counties may elect to have the regional authority exercise their powers upon taking the foregoing actions, and with the consent by resolution of all the municipalities and counties theretofore having elected to have their powers exercised by the regional authority.

(c) *Appointment, Qualifications, Tenure and Meetings of Housing Authority Commissioners.* If a housing authority has been created and authorized to exercise housing project powers, commissioners of the authority shall be appointed as follows:

(1) In the case of a municipal housing authority, the mayor [with the advice and consent of the governing body] shall appoint [five] persons as commissioners. In the case of a county housing authority, the governing body shall appoint [five] commissioners.[1] *Alternative A:* Commissioners who are first appointed to a municipal or county authority shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of five years and thereafter until their successor shall be chosen except that all vacancies shall be filed for the unexpired term. *Alternative B:* The term of office of each commissioner shall be [ ] year[s] and thereafter until their successor shall be chosen.

(2) In the case of a regional housing authority, the governing body of each municipality and county participating shall appoint one person as a commissioner of the authority. In the event only two municipalities or counties or a combination thereof are participating, the commissioners appointed by the governing bodies of the participants shall appoint one additional commissioner. The commissioners of a regional authority shall be appointed for terms of [five] years, except that all vacancies shall be filled for the unexpired term.

(3) Each commissioner shall qualify by taking the offical oath of office prescribed by general statute.

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[1] Variations in appointive practices among the states may require that other language be used to indicate what official or body appoints members to the authority and how officers of the authority are selected. Care should be taken to provide proper procedures for both municipalities and counties.

(4) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of appointment or reappointment of any commissioner shall be filed with the authority, and this certificate shall be conclusive evidence of the due and proper appointment of the commissioner.

(5) The powers of each authority shall be vested in the commissioners thereof in office from time to time. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any vacancies. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. Meetings of the commissioners of an authority may be held anywhere within the area of operation of the authority or within any additional area in which the authority is authorized to undertake a project.

(6) The commissioners of an authority shall elect a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, legal and technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation.[2] An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

(d) *Contracts of an Authority*. In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, an authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of compliance with the provisions of subsections (a) or (b) of this section, as the case may be. A copy of the resolutions required to be adopted by the governing body electing to have its housing project powers exercised by a housing authority shall be filed with the clerk. A copy of the resolution duly certified by the clerk shall be admissible in evidence in any suit, action, or proceeding.

Section 30. Interested Public Officials, Commissioners, or Employees. No public official or employee of a municipality or county board or commission exercising housing project powers, and no commissioner or employee of a housing authority which has been vested by a municipality or county with housing project powers under section 28, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any housing project. If any officer, commissioner, or employee involuntarily acquires any interest, or voluntarily or involuntarily acquired any interest prior to appointment or employment as an officer, commissioner or employee, the officer, commissioner, or employee, shall immediate disclose his interest in writing to the public body exercising housing project powers, and the disclosure shall be entered upon its minutes, and the officer, commissioner or employee shall not participate in any action by the public body relating to the property or contract in which he has any interest. Any violation of the foregoing provisions of this section constitutes misconduct in office. This section shall not be applicable to the acquisition of any interest in bonds of the municipality, county, or authority issued in connection with any housing project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency.

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[2] States may wish to make these positions subject to civil service regulations by inserting appropriate provisions.

Section 31. Removal of Housing Authority Commissioners. For inefficiency, neglect of duty, or misconduct in office, a commissioner of an authority may be removed by the mayor (or in the case of an authority for a county or regional authority, by the body or official which appointed the commissioner), but a commissioner shall be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to the hearing and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk.

Section 32. Reports. At least once a year an authority exercising housing project powers shall file with the clerk a report of its activities for the preceding year and make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this act.

Section 33. State Aid. (a) The [insert name of appropriate agency of state government] shall provide technical and advisory assistance, upon request, to municipalities and counties for a housing project as defined in this act. Such assistance shall include, but need not be limited to, special statistical and other studies and compilations, technical evaluations and information, training activities, professional services, surveys, reports, documents, and any other similar service functions.[1]

(b) The [appropriate state agency] may make low-income housing grants to municipalities and counties for [ ] percent of the individual net project costs. Such grants shall be made from funds appropriated by the legislature for these purposes and shall be exclusive of those costs reimbursed or paid by grants from the federal government.[2]

(c) The [agency] may (1) finance, by mortgage loans or otherwise, the construction of

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[1] States may wish to authorize provision of such technical services to local governments on a reimbursable basis. However, rather than provide authorization within this statute, such states might consider a separate act providing general authorization for all state agencies to provide technical services as proposed in the draft bill, "State Technical Services for Local Government," 31-11-00.

[2] The draft bill, "State Financial Assistance and Channelization of Federal Grant Programs for Urban Development," 34-20-00 of this volume gives the states a meaningful and effective role in federal programs of grants-in-aid to local governments for urban development. States may wish to consider the provisions set forth in this bill as guidelines in drafting this subsection or passage of a separate act to encompass several programs in federally aided fields of local activity.

rehabilitation of housing projects in this state, (2) make temporary loans or advances in anticipation of permanent loans and issue bonds, bond anticipation notes, and other obligations of the agency payable solely from the revenues or other funds of the agency and (3) otherwise assist with housing projects as provided in this act.

Section 34. Separability. **[Insert separability clause.]**

Section 35. Effective Date. **[Insert effective date.]**

URBAN RENEWAL

All but one state now provides authority for municipalities to undertake urban renewal programs. Only 16 states, however, have enabled counties to undertake urban renewal. According to the best information available, only about 32 counties have urban renewal agencies, with only one-third of these agencies operating in unincorporated areas.

Notwithstanding the relatively small amount of current suburban concern, urban renewal programs are needed and should be carried out in all parts of most of our metropolitan areas. The Advisory Commission on Intergovernmental Relations has recommended:

> That States enact legislation authorizing counties in metropolitan areas to provide urban renewal and public housing services to unincorporated areas and small municipalities; and further provide for financial and technical assistance to the counties as well as municipalities for establishing such services and coordinating their administration, especially in multicounty metropolitan areas.*

In most metropolitan areas throughout the country the central city is making strong efforts to strengthen and renew its deteriorating and blighted neighborhoods. In many suburban areas which surround these central cities the problems are not yet so formidable, although they are likely to become so as the suburbs grow, particularly the older ones whose industry and residential character is becoming more like the central cities they border.

Increased county responsibility for urban renewal programs would tend to broaden the area of jurisdiction by including unincorporated and incorporated areas that do not have programs of their own. In those counties where slum clearance and residential dislocation will be substantial, public housing would probably be necessary to enable relocation needs to be met. This has been the case in central cities where the proportion of families with incomes under $4,000 is nearly as large as it is in the suburbs. Cooperation between counties and city renewal and housing agencies, and even joint city-county programs in certain cases, would be mutually advantageous. Such cooperation is fairly common where county programs now exist.

County renewal powers would not exclude continued exercise of similar powers by municipal governments and, to the contrary, might facilitate the program of small municipalities which could not maintain full professional staffs of their own or provide adequate relocation housing within their own borders. Examples of this can be found in the Pittsburgh metropolitan area, among others, where county renewal staffs perform, under contract, the technical services needed to carry out renewal projects for which the individual municipality is the actual sponsor. Larger municipalities within counties, especially major central cities, will undoubtedly want to continue using their own highly developed staffs, with the counties performing renewal services and sponsoring projects only in unincorporated areas. Where central city renewal staff is available, a county might find it advantageous to contract with it for staff services. The indispensable role of the counties is that of project sponsor and provider of workable program certification in unincorporated areas where there is no other government capable of performing this role.

Many counties, both within and outside metropolitan areas, may have large rural populations that might resist having the county provide urban-type renewal services. A municipality with an active renewal program of its own might also resist contributing to a county program out of general county revenues. In such situations, the Commission has recommended that it may be appropriate to create a county subordinate tax area in order to administer and finance a needed service in the selected area. At least 20 states currently utilize the subordinate taxing area device to provide governmental services. Draft legislation establishing county subordinate taxing areas may be found on page 31-43-00.

*Advisory Commission on Intergovernmental Relations, ***Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*** (Washington: U.S. Government Printing Office, 1965), p. 114.

State programs of technical and financial assistance can do much to encourage needed urban renewal and public housing programs in small suburban jurisdictions and outlying unincorporated areas. Kentucky and Maine, for example, provide localities with staff assistance to prepare local workable programs needed to qualify for federal urban renewal and public housing grants and to advise local officials on planning and carrying out their programs. The state might also stimulate local programs by matching the local share of costs. Where the establishment of a local renewal agency in small municipalities and unincorporated areas is impractical, the state itself might undertake this responsibility.

The suggested legislation below authorizes municipalities and counties to provide for the rehabilitation, clearance, and redevelopment of slums and blighted areas. The bill contains provisions making local activities eligible for federal assistance under the provisions of recent amendments of the Federal Housing Act. Existing state urban renewal laws may require new or amendatory legislation in order for states and localities to receive the full benefits from the federal program.

The following legislation places the urban renewal responsibility in the hands of the general purpose unit of government rather than in a separate authority. The governing body may exercise its urban renewal powers through a board or a commissioner or through such offices of a municipality or county as it may by resolution determine. If the local governing body itself does not choose to exercise urban renewal powers, it may have such powers carried out by an urban renewal agency or by the housing authority, if one exists or is subsequently established in the community. The urban renewal agency or the housing authority then is vested with all the urban renewal powers in the same manner as though all powers were vested in the local governing body. The urban renewal agency, however, is given limited autonomy. As required by federal law, it cannot proceed with a renewal project without (a) a workable program supported by the local governing body, (b) approval of the project by the local governing body, (c) conformance with the locality's general plan, (d) provision of the local share of funds by the local governing body, and (e) a public hearing.

The bill would permit political subdivisions to enter into interlocal agreements to jointly or cooperatively undertake urban renewal activities. The initiative in such joint undertakings is left with the localities themselves. The suggested act specifies the basic contents of such agreements and requires review by the attorney general before an agreement goes into effect.

So that the states may assume and appropriate role, provision is made for state technical and financial assistance to municipalities and counties in planning and carrying out urban renewal activities.

In some states it may be desirable to authorize a state agency to exercise the powers given to municipalities and counties under this act. The states could then undertake urban renewal projects in small communities and unincorporated areas where carrying out a program would otherwise be impracticable or impossible. Any state wishing to follow this course might add appropriate provisions to the suggested act. In this case, a finding should be added to section 1 of the act and a new section drafted specifying appropriate procedures to carry out this function.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing authorization for municipalities and counties to undertake slum clearance and urban renewal."]

(Be it enacted, etc.)

Section 1. Findings and Declaration of Necessity. It is hereby found and declared that there exist in municipalities and counties of the State slum and blighted areas (as herein defined) which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous local government burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of communities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its communities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that salvageable slum and blighted areas can be conserved and rehabilitated through appropriate public action as herein authorized, and the cooperation and voluntary action of the owners and tenants of property in such areas.

It is further found and declared that the powers conferred by this act on municipalities and counties will enable the elimination and prevention of slums and blight in a more coordinated, orderly and efficient manner, and the carrying out of these activities in small communities or unincorporated areas where their undertaking is impractical without the provisions of this act.

It is further found and declared that municipalities and counties are unable to provide for the rehabilitation, clearance and redevelopment of such slums and blighted areas without state technical services and financial assistance and that the granting of state financial assistance is a public purpose for which public monies may be expended.[1]

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended and the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

Section 2. Definitions. The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" means a public agency created by section 17 of this act.

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[1] If state financial assistance is not to be included in this bill, this paragraph should be omitted.

(2) "Municipality" means any [city, village, borough, or town], but not county.

(3) "County" means any county in this state.

(4) "Public body" means the state and any county or municipality; and any board, commission, authority, agency, district, subdivision or any department, agency instrumentality, corporate or otherwise, of any of the foregoing.

(5) "Local governing body" means the [council] or [board of commissioners], or other legislative body charged with governing the municipality or county.

(6) "Mayor" means the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(7) "County chairman" means the presiding officer of a county governing board.

(8) "Clerk" means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

(9) "Federal government" means any department, agency or instrumentality, corporate or otherwise, of the United States of America.

(10) "Slum area" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(11) "Blighted area" means an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality or county, retards the provision of housing accommodations or constitues an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use; but if the blighted area consists of open land, the conditions contained in the proviso in section 5 (d) shall apply and any disaster area referred to in subsection 5 (g) shall constitute a "blighted area."

(12) "Urban renewal project" means undertakings and activities in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an

urban renewal area, or a program or code enforcement in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(i) Acquisition of a slum area or a blighted area or portion thereof.

(ii) Demolition and removal of buildings and improvements.

(iii) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this act in accordance with the urban renewal plan.

(iv) Disposition of any property acquired in the urban renewal area (including sale, initial leasing or retention by the municipality or county itself) at its fair value for uses in accordance with the urban renewal plan.

(v) Carrying out plans for a program of code enforcement and a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan.

(vi) Acquisition of real property in the urban renewal area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property.

(vii) Acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.

(viii) Acquisition, without regard to any requirement that the area be a slum or blighted area, of air rights in an area consisting principally of land in highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing (and related facilities and uses) designed specifically for, and limited to families and individuals of low or moderate income.

(ix) Construction of foundations and platforms necessary for the provision of air rights sites of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income.

(13) "Urban renewal area" means a slum area or a blighted area or a combination thereof which the local governing body designates as appropriate for an urban renewal project.

(14) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the general plan for the municipality or county as a whole except as provided in subsection 5 (g), and (2) shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and

rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, and building requirements.

(15) "Related activities" means (1) planning work for the preparation of a general neighborhood renewal plan, or for the preparation or completion of a communitywide plan or program pursuant to section 6 of this act, and (2) the functions related to the acquisition and disposal of real property pursuant to section 7 paragraph (4) of this act.

(16) "Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "Bonds" means any notes, interim certificates, certificates of indebtedness, debentures or other obligations.

(18) "Obligee" means any bondholder, agent, or trustee for any bondholders, or lessor demising property used in connection with urban renewal, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality or county.

(19) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(20) "Area of operation" means the area within the corporate limits of the municipality or the territorial limits of the county; but a county shall not undertake any project or projects within the boundaries of any municipality without the request or consent, by resolution, of the local government body of the municipality and a municipality cannot undertake any project or projects outside its area of operation without the request or consent of the local governing body of the county.

(21) "Housing authority" means a housing authority created by and established pursuant to [insert appropriate statutory citation].

(22) "Board" or "commission" means a board, commission, department, division, office, body or other unit of the municipality or county, authorized to undertake urban renewal projects.

(23) "Public officer" means any officer who is in charge of any department or branch of the government of the municipality or county relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality or county.

Section 3. Encouragement of Private Enterprise. A municipality or county, to the greatest extent it determines to be feasible in carrying out the provision of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality or county shall give consideration to this objective in exercising its powers under this act, including the approval of urban renewal plans, communitywide plans or programs for urban renewal, and general neighborhood renewal plans, the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

Section 4. Finding of Necessity by Local Governing Body. No municipality or county shall exercise the authority hereafter conferred upon municipalities or counties by this act until after the local governing body of the municipality or county shall have adopted a resolution finding that (1) one or more slum or blighted areas exist in such municipality or county and (2) the rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality or county.

Section 5. Preparation and Approval of Plan for Urban Renewal Project. (a) An urban renewal project for an urban renewal area shall not be planned or initiated unless the governing body has, by resolution, determined such area to be a slum area or a blighted area or a combination thereof and designates such area as appropriate for an urban renewal project.

(b) The municipality or county may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to a municipality or county. Prior to its approval of an urban renewal project, the local governing body shall submit the plan to the planning commission of the municipality or county, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality or county as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal project after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality or county. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project and the plan therefor if it finds that:

(1) A feasible method exists for the location of families who will be displaced from the urban renewal area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families.

(2) The urban renewal plan conforms to the general plan of the municipality or county as a whole.

(3) The urban renewal plan gives due consideration to the provision of adequate park and recreational areas and facilities that may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of children residing in the general vicinity of the site covered by the plan.

(4) The urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality or county as a shole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise.

If the urban renwal area consists of an area of open land to be acquired by the municipality or county, the area shall not be so acquired unless:

(1) if it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design which is decent, safe, and sanitary exists in the municipality or county; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas; that the conditions of blight in the area and the shortage of decent, safe, and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an intergral part of and essential to the program of the municipality or county; or

(2) if it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives, which acquisition may require the exercise of governmental action, as provided in this act, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions. outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, the need for the correlation of the area with other areas of a municipality or county by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

(e) An urban renewal plan may be modified at any time; but if modified after the lease or sale by the municipality or county of real property in the urban renewal project area, the modification may be conditioned upon such approval of the owner, lessee, or successor in interest as the municipality or county may deem advisable and in any event shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

(f) Upon the approval by the local governing body of an urban renewal plan or of any

modifications thereof, such plan or modifications shall be deemed to be in full force and effect for the respective urban renewal area and the municipality or county may then cause such plan or modification to be carried out in accordance with its terms.

(g) Notwithstanding any other provisions of this act, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Public Law 875, Eighty-First Congress, or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection (d) of this section and the provisions of this section requiring a general plan for the municipality or county and a public hearing on the urban renewal project.

Section 6. Neighborhood and Communitywide Plans. (a) A municipality, county, or any public body authorized to perform planning work may prepare a general neighborhood renewal plan for an urban renewal area or areas, together with any adjoining areas having specially related problems which may be of such scope that urban renewal activities may have to be carried out in stages. Such plan may include, but is not limited to, a preliminary plan which:

(1) Outlines the urban renewal activities proposed for the area or areas involved.

(2) Provides a framework for the preparation of urban renewal plans.

(3) Indicates generally the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property and portions of the area or areas contemplated for clearance and redevelopment.

A general neighborhood renewal plan shall, in the determination of the local governing body, conform to the general plan of the locality as a whole.

(b) A municipality, county, or any public body authorized to perform planning work may prepare or complete a communitywide plan or program for urban renewal which shall conform to the general plan for the development of the municipality or county as a whole and may include, but is not limited to, identification of slum or blighted areas, measurement of blight, determination of resources needed and available to renew such areas, identification of potential project areas and types of action contemplated, and scheduling of urban renewal activities.

[(c) Authority is hereby vested in every municipality and county to prepare, to adopt, and to revise from time to time a general plan for the physical development of the municipality or county as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related planning activities, and to make available and to appropriate necessary funds therefor.][1]

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[1] This subsection is suggested for inclusion only in states where municipalities and counties lack legislative authorization for the preparation of a general plan.

Section 7. Powers. Every municipality and county shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(1) To undertake and carry out urban renewal projects and related activities within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act; and to disseminate slum clearance and urban renewal information.

(2) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project and related activities, and to include in any contract let in connection with such a project and related activities, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(3) Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, device, eminent domain, or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality or county against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purpose of this act; but no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality, county, or other public body exercising powers thereunder, in the exercise of such functions with respect to an urban renewal project and related activities, unless the legislature shall specifically so state.

(4) With the approval of the local government body:

(i) Prior to approval of an urban renewal plan, or approval of any modifications of the plan, to acquire real property in an urban renewal area, demolish and remove any structures on the property, and pay all costs related to the acquisition, demolition, or removal, including any administrative or relocation expenses.

(ii) To assume the responsibility to bear any loss that may arise as the result of the exercise of authority under this subsection in the event that the real property is not made part of the urban renewal project.

(5) To invest any urban renewal funds held in reserve or sinking funds or any such funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 11 of this act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled.

(6) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith; and to include in any contract for financial assistance with the federal government for or with respect to an urban renewal project and related activities such conditions imposed pursuant to federal laws as the municipality or county may deem reasonable and appropriate and which are not inconsistent with the purposes of this act.

(7) Within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans, which plans may include, but are not limited to:

(i) Plans for carrying out a program of voluntary or compulsory repair or rehabilitation of buildings and improvements.

(ii) Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements.

(iii) Appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of urban renewal projects and related activities.

(8) To develop, text, and report methods and techniques, and carry out demonstrations and other activities within its area of operation, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing housing for families and persons of low income and to apply for, accept, and utilize grants of funds from the federal government for such purposes.

(9) To prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations and others) displaced from an urban renewal area, and to make relocation payments to or with respect to such persons for moving and readjustment expenses

and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government.

(10) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and to levy taxes and assessments for such purposes; to zone or rezone any part of the municipality or county within its area of operation or make exceptions from building regulations; and to enter into agreements with a housing authority or an urban renewal agency vested with urban renewal powers under section 16 of this act (which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary), respecting action to be taken by such municipality or county pursuant to any of the powers granted by this act.

(11) To close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; and to plan or replan any part of the municipality or county.

(12) Within its area of operation, to organize, coordinate, and direct the administration of the provisions of this act as they apply to such municipality or county in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such municipality or county may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or county or to reorganize existing offices in order to carry out such purpose most effectively.

(13) To exercise all or any part or combination of powers herein granted.

Section 8. Cooperation Among Municipalities and Counties.[1] (a) Any power or powers, privileges, or authority exercised or capable of exercise by a municipality or a county under this act may be exercised and enjoyed jointly with any other municipality or county, including but not limited to the preparation of urban renewal plans, the undertaking and carrying out of urban renewal projects and related activities, the power of eminent domain, and the issuance of bonds.

(b) Any two or more municipalities, two or more counties, or any combination thereof may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this act. Entry into such agreements shall be authorized by the local governing bodies of the participating municipalities and counties.

(c) Agreements entered into pursuant to this section shall specify the following:

(1) The duration of the agreement.

(2) The precise organization, composition, and nature of any separate legal administrative entity created thereby together with the powers delegated thereto.

(3) The purpose or purposes of the agreement.

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[1] Section 8 constitutes one method of authorizing two or more municipalities, counties, or combinations of municipalities and counties, to undertake urban renewal projects. It is possible that states which already have a general interlocal cooperation act would not need this specific authorization. Another method would be a separate regional urban renewal law. Each state must carefully consider its own constitutional and legal requirements in determining which method to use. Additionally, local counsel should be consulted particularly concerning bond issuances and other financing problems.

(4) The manner of financing the joint or cooperative exercise of powers under this act of establishing and maintaining a budget therefor.

(5) The permissible method or methods of terminating the agreement and for the disposal of property upon termination.

(6) Any other necessary or proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in additions to items 1, 3, 4, 5, and 6 enumerated in subdivision (c) hereof, contain the following:

(1) Provisions for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, municipalities and counties party to the agreement shall be represented.

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(e) Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve an agreement submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the local governing bodies of the municipalities and counties concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within sixty days of its submission shall constitute approval thereof.

(f) Financing of joint projects by agreement shall be as provided by law.

(g) Prior to its entry into force, an agreement made pursuant to this act shall be filed with the municipal or county clerk of the respective municipalities or counties concerned and with the secretary of state.

(h) Any municipality or county entering into an agreement pursuant to this section may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing personnel or services therefor.

(i) Any one or more municipalities or counties may contract with any one or more other municipalities or counties to perform any governmental service, activity, or undertaking which any entering into the contract are authorized by law to perform; but such contract shall be authorized by the local governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

Section 9. Eminent Domain. (a) A municipality or county shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project and related activities under this act. A municipality or county may exercise the power of eminent domain in the manner provided in [insert appropriate statutory citation], and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner; but no real property belonging to the United States, the state, or any political subdivision of the state, may be acquired without its consent.

(b) In any proceeding to fix or assess compensation for damages for the taking [or damaging][1] of property, or any interest therein, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following matters shall be admissible and shall be considered in fixing such compensation or damages, in addition to evidence or testimony otherwise admissible:

(1) Any use, condition, occupancy, or operation of such property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law or any ordinance or regulatory measure of the state, county, municipality, other political subdivision, or any agency thereof, in which such property is located, as being unsafe, substandard, insanitary, or otherwise contrary to the public health, safety, or welfare.

(2) The effect on the value of such property, or any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of any such use, condition, occupancy, or operation.

(c) The foregoing testimony and evidence shall be admissible notwithstanding that no action has been taken by any public body or public officer toward the abatement, prohibition, elimination, or correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public body or public officer charged with the duty or authority so to do has rendered, made or issued any judgment, decree, determination, or order for the abatement, prohibition, elimination, or correction of any such use, condition, occupancy, or operation shall be admissible and shall be prima facie evidence of the existence and character of such use, condition, or operation.

Section 10. Disposal of Property in Urban Renewal Area. (a) A municipality or county may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, and may enter into contracts with respect thereto, in an urban renewal area for residential, recreational, commercial, industrial, educational, or other uses or for public use, or may retain such property or interest for public use, in accordance with the urban renewal plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas or to otherwise carry out the purposes of this act; but the sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality or county may determine to be in the public interest, including the obligation to begin with a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality and county shall take into account and give consideration to the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality or county retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The municipality or county in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality or county until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality or county which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer and the urban renewal plan (or such part or parts of such contract or plan as the municipality or county may determine) may be recorded in the land records of the [appropriate jurisdiction] in such manner as to afford actual or constructive notice thereof.

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[1] Insert if required by state constitution.

(b) A municipality and county may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality and county may, by public notice by publication in a newspaper having a general circulation in the community (thirty days prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section), invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that proposals shall be made by those interested within thirty days after the date of publication of such notice, and that such further information as is available may be obtained at such office as shall be designed in said notice. The municipality or county shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out, and may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by the municipality or county in the urban renewal area. The municipality or county may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this act; but a notification of intention to accept such proposal shall be filed with the governing body not less than thirty days prior to any such acceptance. Thereafter, the municipality or county may execute such contract in accordance with the provisions of subsection (a) and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contract.

(c) A municipality and county may temporarily operate and maintain real property acquired by it in an urban renewal area for or in connection with an urban renewal project pending the disposition of the property as authorized in this act, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan.

(d) Any real property acquired pursuant to section 7 para. (4) may be disposed of without regard to other provisions of this section if the local governing body has consented to be disposal.

(e) Notwithstanding any other provisions of this act, where the municipality or county is situated in an area designated as a redevelopment area under the Federal Area Redevelopment Act (Public Law 87-27), or any act supplementary thereto, land in an urban renewal project area designated under the urban renewal plan for industrial or commercial uses may be disposed of to any public body or nonprofit corporation for subsequent disposition as promptly as practicable by the public body or corporation for redevelopment in accordance with the urban renewal plan, and only the purchaser from or lessee of the public body or corporation, and their assignees, shall be required to assume the obligation of beginning the building of improvements within a reasonable time. Any disposition of land to a public body or corporation under this subsection shall be made at its fair value for uses in accordance with the urban renewal plan.

Section 11. Issuance of Bonds.[1] (a) A municipality and county shall have power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and shall also have power to issue refunding bonds for the payment or retirement of the bonds previously issued by it. Bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality or county derived from or held in connection with its undertaking and carrying out of urban renewal

[1] In some states, municipalities and counties may already have adequate statutory bonding powers which can be used for urban renewal purposes. In these cases, these bonding powers could be incorporated by reference in this bill. Local counsel should be consulted concerning the legal acceptability of this method.

projects under this act; but payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality or county under this act, and by a mortgage of any such urban renewal projects, or any part thereof, title to which is in the municipality or county.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum per annum, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or ordinance, or trust indenture or mortgage issued pursuant thereto.

(d) Bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality and county may determine or may be exchanged for other bonds on the basis of par; but bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount on the bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality or county of not to exceed the interest cost to the municipality or county of the portion of the bonds sold to the federal government.

(e) In case any of the public officials of the municipality or county whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of the bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any bond reciting in substance that it has been issued by the municipality or county in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and the project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

Section 12. Bonds as Legal Investments. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality or county pursuant to this act or by any urban renewal agency or housing authority vested with urban renewal project powers under section 16 of this act; but the bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in any amount which (together with any other moneys irrevocably committed to the payment of principal and interest on the bonds or other obligations) will suffice to pay the principal of the bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on the bonds or other obligations at their maturity. Bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

Section 13. Property Exempt from Taxes and from Levy and Sale by Virtue of an Execution. (a) All property of a municipality or county, including funds, owned or held by it for the purpose of this act shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality or county be a charge or lien upon such property; but the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this act by a municipality or county on its rents, fees, grants, or revenues from urban renewal projects.

(b) The property of a municipality or county, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof; but such tax exemption shall terminate when the municipality or county sells, leases, or otherwise disposes of the property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to the property.

Section 14. Cooperation by Public Bodies. (a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project and related activities authorized by this act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality or county.

(2) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section.

(3) Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan and related activities.

(4) Lend, grant, or contribute funds to a municipality or county, and borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county, or other public body, or from any other source.

(5) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with the federal government, a municipality, county, or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project and related activities.

(6) Cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality or county.

If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, other than the municipality or county which is authorized by law to engage in the undertaking, carrying out, or administration of urban renewal projects and related activities (including any agency or instrumentality of the United States of America), the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the terms "municipality" and "county" shall also include an urban renewal agency or a housing authority vested with all of the urban renewal powers pursuant to the provisions of section 16.

(b) Any sale, conveyance, lease, or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement, or public bidding.

(c) For the purpose of aiding in the planning, undertaking, or carrying out of any urban renewal project and related activities of an urban renewal agency or a housing authority hereunder, a municipality and county may (in addition to its other powers and upon such terms, with or without consideration, as it may determine) do and perform any or all of the actions or things which, by the provisions of subsection (a) of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

(d) For the purposes of this section, or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project and related activities of a municipality or county, such municipality may (in addition to any authority to issue bonds pursuant to section 11) issue and sell its general obligation bonds. Any bonds issued by a municipality or county pursuant to this section shall be issued in the manner and within the limitations prescribed by the applicable laws of this state for the issuance and authorization of general obligation bonds by such municipality or county. Nothing in this section shall limit or otherwise adversely affect any other section of this act.

Section 15. Title of Purchaser. Any instrument executed by a municipality or county and purporting to convey any right, title, or interest in any property under this act shall be conclusively presumed to have been executed in compliance with the provisions of this act insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

Section 16. Exercise of Powers in Carrying Out Urban Renewal Project and Related Activities. (a) A municipality or county may itself exercise its urban renewal powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by section 17) or by its housing authority, if one exists or is subsequently established. In the event the local governing body makes such determination, the urban renewal agency or the housing authority, as the case may be, shall be vested with all of the urban renewal powers in the same manner as though all such powers were conferred on such agency or authority instead of the municipality or county. If the local governing body does not elect to make such determination, the municipality or county in its discretion may exercise its urban renewal powers through a board or commission or through such officers as its local governing body may by resolution determine.

(b) As used in this section, the term "urban renewal powers" shall include the rights, powers, functions, and duties of a municipality or county under this act, except the following:

(1) The power to determine an area to be a slum or blighted area or combination thereof and to designate such area as appropriate for an urban renewal project and to hold any public hearings required with respect thereto.

(2) The power to approve:

(i) Urban renewal plans and modifications thereof.

(ii) General neighborhood renewal plans and communitywide plans or programs for urban renewal.

(iii) The acquisition, demolition, removal, or disposal of property as provided in section 7 paragraph (4).

(3) The power to establish a general plan for the locality as a whole.

(4) The power to carry out a program of code enforcement.

(5) The power to make the determinations and findings provided for in section 3, section 4, and section 5 (d).

(6) The power to issue general obligation bonds under section 14.

(7) The power to assume the responsibility to bear loss as provided in section 7 paragraph (4).

(8) The power to appropriate funds, levy taxes and assessments, and to exercise other powers provided for in section 7 (i).

Section 17. Urban Renewal Agency. **(a) There is hereby created in each municipality and county a public body corporate and politic to be known as the "urban renewal agency" of the municipality or county; but the agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding prescribed in section 4 and has elected to have the urban renewal powers exercised by an urban renewal agency as provided in section 16.**

(b) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor or the county chairman, as appropriate [by and with the advice and consent of the local governing body], shall appoint a board of the urban renewal agency which shall consist of five commissioners.[1] The term of office of each such commissioner shall be one year.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality or county, as the case may be, and such certificate shall be conclusive evidence of the due and proper appointment of the commissioner.

(d) The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency (which shall be coterminous with the area of operation of the municipality or county) and are otherwise eligible for such appointments under this act.

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[1] Variations in appointive practices among the states may require that other language be used to indicate what official or body appoints members to the agency board and how officers of the agency board are selected. Care should be taken to provide proper procedures for both municipalities and counties.

(e) The mayor or county chairman, as appropriate, shall designate a chairman and vice chairman from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties, and compensation. For legal service as it may require, an agency may employ or retain its own counsel and legal staff.. An agency authorized to transact business and exercise powers under this act shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of the calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality or county and that the report is available for inspection during business hours in the office of the municipal or county clerk and in the office of the agency.

(f) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after he shall have been given a copy of the charges at least ten days prior to such hearings and have had an opportunity to be heard in person or by counsel.

Section 18. Interested Public Officials, Commissioners, or Employees. No public official or employee of a municipality or county board or commission, and no commissioner or employee of a housing authority or urban renewal agency which has been vested by a municipality or county with urban renewal powers under section 16 shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of the municipality or county project. If any officer, commissioner, or employee involuntarily acquires any interest, or voluntarily or involuntarily acquired any interest prior to appointment or employment as an officer, commissioner, or employee, he shall immediately disclose his interest in writing to the public body exercising urban renewal powers, and the disclosure shall be entered upon its minutes, and the officer, commissioner, or employee shall not participate in any action by the public body relating to the property or contract in which he has any interest. Any violation of the foregoing provisions of the section constitutes misconduct in office. This section shall not be applicable to the acquisition of any interest in bonds of the municipality, county, or authority issued in connection with any urban renewal project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to acting as a trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a government agency.

Section 19. State Aid. (a) The [insert name of appropriate agency of state government] shall provide technical and advisory assistance, upon request, to municipalities and counties for an urban renewal project as defined in this act. Such assistance shall include, but need not be limited to, preparation of workable programs, relocation planning, special statistical and other studies and compilations, technical evaluations and information, training activities, professional services, surveys, reports, documents, and any other similar service functions.[1]

(b) The [appropriate state agency] may make urban renewal grants to municipalities and counties for [ ] percent of the individual net project costs. Advances from capital grants may be made for relocation planning, pursuant to regulations adopted by the [appropriate state agency]. Grants shall be made from funds appropriated by the legislature for these purposes and shall be exclusive of those costs reimbursed or paid by grants from the federal government.[2]

Section 20. Separability. [Insert separability clause.]

Section 21. Effective Date. [Insert effective date.]

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[1] States may wish to authorize provision of such technical services to local governments on a reimbursable basis. However, rather than provide authorization within this statute, such states might consider a separate act providing general authorization for all state agencies to provide technical services as proposed in the draft bill, "State Technical Services for Local Governments," page 31-11-00.

[2] The draft bill, "State Financial Assistance and Channelization of Federal Grant Programs for Urban Development," gives the states a meaningful and effective role in federal programs of grants-in-aid to local governments for urban development. States may wish to consider the provisions set forth in this bill as guidelines in drafting this subsection or passage of a separate act to encompass several programs in the federally aided field of local activity.

38-40-00

STATE AID FOR MASS TRANSPORTATION[1]

The public cost of acquiring, modernizing, and expanding mass transportation facilities can be counted in the billions of dollars. Among the largest metropolitan areas, only five have rail mass transit facilities (Boston, Chicago, Cleveland, Philadelphia and New York). The San Francisco metropolitan area in 1969 is now constructing a rapid transit system that will cost well over $1 billion when it is completed, and the cost of the proposed rapid transit system for the Washington, D.C. metropolitan area is projected at $2½ billion. Other large cities, including Atlanta, Baltimore, Los Angeles and Seattle are currently considering or going ahead with the construction of rail transit systems.

Although a substantial portion of the funds that will be needed for mass transportation facilities will necessarily come from local sources–mainly bond issues of municipalities, urban counties, and local areawide transit districts and authorities–and some funds are now available from the U.S. Department of Transportation, financial aid will also have to come from the States. Several States are now recognizing the need to provide substantial assistance to urban mass transportation facilities. The other urban States will have to devote some of their bonding capacity and tax resources to the solution of the urban transportation crisis, in partnership with their localities and the Federal Government.

The States have a traditional responsibility for assuring that adequate arrangements exist for the provision of basic local governmental services, and can play a key role in meeting existing and emerging metropolitan mass transportation needs. State policies with respect to taxation of transportation properties and the regulation of transportation rates and service have an important bearing upon the ability of private and public enterprise to provide adequate mass transportation service to metropolitan area residents. State government is in a strong position to help resolve problems among conflicting local jurisdictions in providing coordinated mass transportation facilities and supporting adequate transportation planning on an areawide basis. Finally, the stability of many urban areas, and the effective use of State funds for public works, housing, education and health may be jeopardized by the deterioration or inadequate provision of urban transportation facilities and services.

For these reasons, States should take legislative and administrative action to extend technical and financial assistance to their metropolitan areas for the planning and administration of mass transportation facilities and services and for the acquisition and construction of such facilities.

To provide legislative authority for the provision of such services, the following draft legislation would authorize the establishment or designation of an agency of the State government (1) to advise and assist the Governor and the legislature in the formulation of over-all mass transportation policies and plans, (2) make necessary studies and render technical assistance to local governments, (3) consult with the appropriate State, local and private officials carrying out programs affecting mass transportation, (4) participate in regulatory proceedings affecting mass transportation, (5) develop proposals for retaining urban and commuter transportation facilities, and (6) administer a program of financial assistance to local governments for the acquisition and construction of mass transportation facilities.

[1] Replaces previous suggested legislation, "Mass Transportation in Metropolitan Areas" contained in earlier editions of ACIR's *State Legislative Program.*

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38-40-00

The draft bill establishes a program of State aid for mass transportation capital projects and authorizes urban localities to acquire, construct and operate such projects and to participate in State and Federal mass transit grant programs. It also authorizes localities to subsidize privately-owned and operated mass transportation facilities.

The text of the suggested legislation is based in part on the provisions of Chapter 16, Laws of 1959 and Chapter 717, Laws of 1967, State of New York.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to extend state technical and financial assistance to metropolitan areas for planning, development and administration of mass transportation facilities and services, and to provide financial assistance for the acquisition and construction of mass transportation facilities."]

(Be it enacted, etc.)

Section 1. Purpose. **The legislature finds that:**

(1) adequate and efficient mass transportation services are essential to the economic growth of the urban communities of the state and the well-being of its people;

(2) the state should have a general mass transportation policy growing from consultation among the various departments and agencies of the state, and with the communities of the state, neighboring states and the federal government;

(3) financial and technical assistance should be provided to the urban communities of the state with respect to organizing and financing adequate mass transportation facilities and services;

(4) financial assistance should be provided for the acquisition and construction of mass transit facilities; and

(5) responsibility for leadership and direction should be vested in an agency of the state to assist and advise the Governor and the legislature in the development of such programs and policies.

TECHNICAL AND FINANCIAL ASSISTANCE FOR PLANNING AND ADMINISTRATION

Section 2. Definitions. **As used in this act:**

(1) "Urban community" means a city, [town], or village with a population of [5,000] or more; a county containing one or more such cities, [towns], or villages; two or more of the foregoing acting

jointly; or an authority or district established by law to provide mass transportation in an area containing two or more such cities, [towns], villages, or counties.

(2) "Mass transportation capital project" means the acquisition, construction, reconstruction or improvement of any rapid transit, railroad, omnibus, marine transportation or other mass transportation capital equipment used in connection therewith.

(3) "Urban project" means any mass transportation capital project undertaken by an urban community.

(4) "Federal assistance" means funds available, other than by loan, from the federal government to any urban community, either directly or through allocation by the state, for any mass transportation capital project.

(5) "Project cost" means the actual or estimated cost of any urban project, including relocation assistance payments, or the estimated reasonable cost thereof as approved by the Director, whichever is lower, less any federal assistance received or to be received for such project.

Section 3. General Functions and Powers. The Director of the Department of [Community Affairs],[1] (hereinafter referred to as the Director), shall:

(1) Advise and assist the Governor in formulating (i) a mass transportation policy for the state, including coordination of policies and activities among the state departments and agencies; (ii) proposals designed to help meet and resolve special problems of mass transportation within the state; and (iii) programs of financial and technical assistance for the comprehensive planning, development, and administration of mass transportation facilities and services;

(2) Study mass transportation problems and provide technical assistance to units of local government;

(3) Consult and cooperate with officials and representatives of the state and its political subdivisions, neighboring states, the Federal government, and interstate agencies on problems affecting mass transportation in the state, and with officials and representatives of carriers and transportation facilities in the state and other persons, organizations and groups concerned with mass transportation facilities and services;

(4) Appear and participate, with the approval of the Governor, in proceedings before any federal, state, or local regulatory agency involving or affecting mass transportation in the state;

(5) Encourage experimentation in developing new mass transportation facilities and services;

[1] Some states may wish to designate the Department of Transportation where such an agency exists.

(6) Recommend policies, programs and actions designed to improve utilization of urban and commuter mass transportation facilities;

(7) Administer the program of mass transportation capital grants provided in this Act; and

(8) Exercise such other functions, powers and duties in connection with mass transportation problems as the Governor may direct.

Section 4. Assistance from Other Agencies. **All departments, divisions, boards, bureaus, commissions, public authorities, or other agencies of the state or its political subdivisions shall provide assistance and data to the Director to enable him to carry out his functions, powers and duties.**

Section 5. Inspections; Investigations and Hearings; Witnesses; Books and Documents. **The Director at reasonable times may inspect the property and examine the books and papers dealing with the type and adequacy of services of any person, firm or corporation engaged in operating a public mass transportation facility or system in whole or in part within the state. He may hold investigations and hearings within or without the state. This section shall not affect the regulatory power of the state with respect to transportation rates and services.**

Section 6. Studies; Surveys. **The Director may undertake relevant studies, inquiries, surveys or analyses. He may cooperate with any public or private agency, including educational, civic and research organizations.**

Section 7. Reports. **The Director shall make an annual report to the Governor and the legislature, including recommendations for executive and legislative action to further the purposes of this act.**

STATE AID FOR MASS TRANSPORTATION CAPITAL PROJECTS

Section 8. Urban projects. **(a) State financial assistance authorized by this act may be used to pay [seventy-five] percent of the project cost of any approved urban project.**

(b) ***Conformity to Plan.*** **No Urban project shall be eligible for assistance under this act until the project has been approved by the Director as consistent with the statewide comprehensive master plan for transportation approved by the Governor and the legislature.**

(c) State moneys appropriated for any urban project shall be allotted pursuant to a contract entered into by the Director, in the name of the state, and the urban community undertaking such project. The contract may include any provision agreed upon by the parties thereto, and shall include, in substance, the following provisions:

(1) An estimate of the reasonable cost of the project as determined by the Director.

(2) An agreement by the Director to pay to the urban community, following completion of the project, or during the undertaking thereof in the form of progress payments, [seventy-five] percent of the project costs.

(3) An agreement by the urban community to (i) proceed expeditiously with, and complete, the project in accordance with plans approved by the Director; (ii) commence and continue operation of the project on completion of the project, and not to discontinue operation or dispose of all or part of the project without the approval of the Director; (iii) apply for, and make reasonable efforts to secure, federal assistance for the project, subject to any conditions that the Director may require in order to maximize the amounts of such assistance received or to be received for all projects in the state; and (iv) provide for the payment of the urban community's share of the cost of the project.

(4) A provision that, if federal assistance which was not included in the calculation of the state payment pursuant to paragraph (2) of this subsection becomes available to the urban community, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance, and the urban community shall either (i) pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation or, (ii) if such additional federal assistance has not been received by the urban community, authorize the state to receive such amount from the federal government and to retain an appropriate amount thereof.

(d) The Director shall prepare and file with the Governor and the legislature an annual report on the scope and results of construction undertaken pursuant to this act.

(e) For each contract concerning an urban project, the Director shall keep adequate records of the amount of the payment by the state pursuant to paragraph (2) of subsection (c) of this section, and of the amount of federal assistance received by the urban community. These records shall be retained by the Director and shall establish the basis for application for federal reimbursement of payments made by the state. The Director may make such applications.

(f) The Director may prescribe rules and regulations to carry out the provisions of this section.

Section 9. Provision of Mass Transportation by Urban Communities. (a) Any urban community may adopt local ordinances to authorize:

(1) The acquisition, construction, reconstruction, improvement, equipment, maintenance or operation of one or more mass transportation projects, and the use of streets, roads, highways, avenues, parks or public places for these purposes.

(2) The making of a contract or contracts for the acquisition by purchase of all or any part of the property, plant and equipment of an existing mass transportation facility actually used and useful for the convenience of the public.

(3) The making of a contract or contracts with any person, firm or corporation [including a public authority] for the equipment, maintenance or operation of a mass transportation facility owned, acquired, constructed, reconstructed or improved by the urban community.

(4) The making of a contract or contracts for a fair and reasonable consideration for mass transportation services to be rendered to the public by a privately-owned or operated mass transportation facility. Such power shall include but not be limited to the power to appropriate funds for payment of such consideration, and to provide that all or part of such consideration shall be in the form of capital equipment to be furnished to and used and maintained by such privately-owned or operated mass transportation facility.

[(5) The making of unconditional grants of money or property to a public authority providing mass transportation services to all or part of an urban community in order to assist a public authority in meeting its capital or operating expenses, provided the money does not consist of borrowed funds and the property has not been acquired by the use of borrowed funds. The acceptance of a grant by a public authority shall not operate to make the authority an agency of the urban community making the grant.[1]]

(b) The powers granted by this section shall be in addition to and not in substitution for any other power to acquire, construct, reconstruct, improve, equip, maintain or operate any mass transportation capital project.

Section 10. Participation in Federal and State Assistance Programs for Mass Transportation. (a) Any urban community, either individually or jointly with one or more other urban communities, may apply for, accept, and expend financial assistance from:

(1) The state, for one or more mass transportation capital projects provided pursuant to this title, whether by way of direct financial assistance or by way of pre-financing of any financial assistance from the Federal government.

(2) The Federal government, or any agency or instrumentality thereof, for the construction, operation, or maintenance of one or more mass transportation capital projects provided pursuant to to any act of the Congress of the United States or any rule, regulation or order promulgated pursuant thereto.

[1] This paragraph should be included where public mass transportation authorities are authorized.

(b) No urban community whether acting individually or jointly with one or more other urban communities, shall submit to the United States, or any agency or instrumentality thereof, any project application for one or more mass transportation capital projects, unless the application or applications therefor shall have been first approved by the Director as being a part of or consistent with a statewide comprehensive master plan for transportation approved by the Governor and the legislature.

Section 11. Separability clause. **[Insert separability clause.]**

Section 12. Effective date. **[Insert effective date.]**

PREPAID GROUP PRACTICE OF HEALTH CARE

The Federal-State program of medical assistance to the needy and medically needy (Medicaid), enacted by Congress in 1965 as Title 19 of the Social Security Act, has had an explosive effect on many State and local budgets. State-local expenditures for medical vendor payments rose from $602 million in 1965 to an estimated $2,145 million in fiscal 1968-1969. These increases can be expected to continue as medical care costs continue to rise at a faster rate than consumer expenses generally; as all States initiate Medicaid programs (12 had not done so by the Fall of 1968 but must by January 1970); and as they move to meet the Title 19 requirement of comprehensive care for "substantially all" the needy and medically needy by 1975.

With the prospect of mounting budgetary demands from Medicaid, as well as their interest in high quality care, States need to achieve greater efficiency and economy in the provision of medical services under Medicaid. A further incentive is the continuing possibility that Congress may cut back Federal financial participation if it believes that States are not striving to hold down costs in their individual Medicaid programs. Congressional action in 1967 placing limits on Federal sharing in the cost of the care of the medically needy is traceable in part to the conviction of many members of Congress that States were not showing enough zeal in this direction.

In its 1968 report on *Intergovernmental Problems in Medicaid,* the Advisory Commission on Intergovernmental Relations addressed itself to ways in which the States could broaden health services available to Medicaid beneficiaries and possibly reduce the cost of the program. One such possibility it considered was prepaid group practice of health care.

Prepaid group practice plans have certain common features: (1) comprehensive medical services are provided directly to a group of people who make regular premium payments; (2) the services are provided through the coordinated practice of a group of physicians; (3) payments for medical services are made periodically on a fixed capitation basis regulating the payments for needed medical care; and (4) subscribers' premium payments provide compensation for doctors and cover operating expenses so that no member of the physician group has a financial interest in any specific direct service to any individual.

There are, of course, both pros and cons on prepaid group practice. Protagonists claim that it facilitates the provision of better quality medical care; significantly lowers the rates of hospital utilization; reaps the advantages of specialization in medicine; permits development of a predictable annual cost; and can therefore serve as a mechanism for quality control. Critics, on the other hand, allege that prepaid group practice does not always assure patient satisfaction; often must rely on the services of nonplan physicians; is relevant only in certain types of urban areas; restricts freedom of choice; and above all undermines the traditional patient-practitioner relationship.

The ACIR took no position with reference to the pros and cons of group practice as such. It found, however, that many States have constitutional and legislative barriers to the establishment and operation of group practice. It was convinced that these barriers arbitrarily narrow the range of alternatives open to Medicaid beneficiaries, and unnecessarily hamper States in their search for more effective, flexible, and diverse approaches for implementing their respective Medicaid programs. The Commission therefore recommended that "States eliminate constitutional and legislative barriers to the establishment of prepaid group practice health care."

According to Group Health Association of America, Inc., some 20 States have such legal restrictions applicable to physicians' services: Alabama, Colorado, Georgia, Idaho, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Mexico, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia. The limitations generally stem from constitutional and statutory provisions that regulate the practice of the health arts, public powers, insurance, protection of public health, and taxation. They exist in differing degrees among the States cited, and may be classified broadly under the following categories:

– restrictions on the right to organize group practices to provide comprehensive medical care which includes, in addition to physician services, the talents of others in health professions;

– restrictions on the right to establish insurance or other prepayment corporations offering comprehensive health benefits;

– restrictions on the right to establish organizations that combine group practice with prepayment to provide comprehensive health services;

– restrictions on the right of consumers or their agents to run such organizations;

– restrictions on the size of areas that might be served by group practice organizations; and

– restrictions on the functioning of group health plans that arise out of the application of insurance principles to the regulation of direct service health plans.

Congress recognized group practice as an acceptable method of providing health service under Title 19 in the 1967 Social Security Act amendments. In the "free choice of vendor" provision, it provided that: "A State plan for medical assistance must provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arrangements for their availability, on a prepayment basis), who undertakes to provide him such services."

The draft legislation which follows is adapted from the Ohio statute authorizing health care corporations (Chapter 1738, Ohio Revised Code). It is suggested as a positive approach to authorizing prepaid group health plans.

Section 2 defines comprehensive health care to include a broad spectrum of professions and institutions involved in the provision of health services. Section 3 authorizes nonprofit corporations to establish and operate voluntary health care plans. Section 4 makes it clear that health care corporations are not authorized to conduct an indemnity insurance business. Section 5 requires that the board of trustees of the corporation be elected by the subscribers and not include physicians and dentists. Section 6 states that subscribers are members of the health corporation. Section 7 requires physicians, dentists and other health service professionals, as specified in the act, to name representatives to attend board of trustees meetings.

Sections 8 and 9 prescribe the requirements and procedures for applying for and receiving a certificate or license to operate a group practice plan. States may wish to assign licensing and supervisory responsibility to an official other than the State insurance agency, such as the attorney general or the secretary of state.

Under Section 10, the question of service area is left for determination under the group's articles of incorporation. Section 11 through 13 deal with fees, annual reports, and money advances. Section 14 mandates the State supervisory official to examine the affairs of the health care corporation at least once each three years, and gives him authority to supervise any change in the corporation. Section 15 specifies reasons for revocation of the corporation's certificate or license and Section 16 describes the procedure after finding for or against the corporation.

Section 17 authorizes State and local governments to make payroll deductions for premiums due from their employees for group plans. Section 18 authorizes health care corporations to accept payments from various sources on behalf of subscribers. Section 19 deals with cancellation or transfer of subscriptions. Section 20 forbids the health care corporation to use terminology that would identify it as an insurance or surety corporation. Section 21 limits the possibilities of investing idle funds; Section 22 specifies penalties for violations of the Act; and the remaining two sections provide for separability and the effective date.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize and regulate nonprofit corporations providing prepaid comprehensive health care."]

(Be it enacted, etc.)

Section 1. Purpose. The purpose of this act is to authorize nonprofit corporations to establish, maintain, and operate prepaid comprehensive health care plans.

Section 2. Definitions. As used in this act:

(1) "Comprehensive health care" includes, but is not limited to, medical, surgical and dental care provided through licensed physicians or dentists, including any supporting and ancillary personnel, services, and supplies; physical therapy service provided through licensed physical therapists upon the prescription of a physician; psychological examinations provided by registered psychologists; optometric service provided by licensed optometrists; hospital service, both in-patient and out-patient; extended care; convalescent institution care; nursing home care; nursing service provided by a registered nurse or by a licensed practical nurse; home care service of all types required for the health of a person; rehabilitation service required or desirable for the health of a person; preventive medical services of all types; furnishing necessary applicances, drugs, medicines and supplies; health educational services; ambulance service; and any other care, service or treatment related to the prevention or treatment of disease, the correction of defects or the maintenance of the physical and mental well-being of human beings.

(2) "Health care plan" means a plan by which comprehensive health care is provided, at the expense of a nonprofit corporation, to persons who become subscribers to the plan under contracts which entitle the subscribers to certain professional and institutional services, and to certain appliances incidental to the care.

(3) "Health care corporation" means a nonprofit corporation which establishes, maintains, and operates a voluntary nonprofit health care plan.

Section 3. Establishment of Health Care Plan. **Nonprofit corporations organized under the laws of this state, upon compliance with [the state nonprofit corporation act], may establish, maintain, and operate a voluntary nonprofit health care plan. Professional personnel and institutions providing care under the plan shall, as may be required by law, be duly licensed in this state. Contracts with professional personnel and institutions for services may be upon mutually agreeable terms.**

Section 4. Benefit Payment Prohibited. **No contract described in Section 3 shall provide for the payment of any cash or other material benefit to a subscriber of a health care plan, except as provided in Section 10.**

Section 5. Board of Trustees. **The board of trustees of any corporation holding a certificate of authority or license from the [commissioner of insurance] under this act shall be elected by the subscribers and shall serve without compensation, but may be reimbursed for expenses incurred in carrying out their duties. Licensed physicians and dentists are not eligible for election.**

Section 6. Subscribers are Members. **Subscribers to a health care plan maintained by a corporation pursuant to this act shall be members. They shall receive from the corporation, at least annually, a complete description of services available for which the member has paid, and information as to where and how such services may be secured.**

Section 7. Representatives of Physicians and Dentists. **Physicians, dentists [specify other health service personnel] participating in programs pursuant to this act shall name representatives who may attend meetings of the trustees.**

Section 8. Application for Certificate or License. **Before it may issue any contract or certificate to a subscriber, a nonprofit corporation desiring to establish, maintain, and operate a health care plan shall obtain from the [commissioner of insurance] a certificate of authority or license. Each application to the [commissioner] for a certificate or license shall be verified by an officer of the corporation, and shall set forth, or shall be accompanied by the following:**

(1) A copy of the corporation's articles of incorporation, and of any amendments thereto, certified by the secretary of state, which shall define with reasonable certainty the territorial boundaries

within which the corporation proposes to operate a health care plan, and which shall state the location of the principal office for the transaction of its business;

(2) A list of names and residence addresses of all officers and the trustees of the corporation;

(3) A description of the health care plan which the corporation proposes to operate, together with the forms of all contracts or certificates which it proposes to issue under the plan; and

(4) A statement of the assets and liabilities of the corporation.

Section 9. Issuance of Certificate or License. The [commissioner of insurance] shall issue a certificate of authority or license to any health care corporation filing an application in conformity with Section 8, upon payment of the fees prescribed in Section 11 and upon being satisfied, that:

(1) The corporation proposes to establish and operate a bona fide nonprofit health care plan imparting quality medical care under such conditions as the [commissioner] deems to be in the public interest;

(2) The proposed contracts and the proposed rates therefor between the corporation and the subscribers to the plan are fair and reasonable and provide comprehensive health coverage without regard to health or age, except in accordance with regulations prescribed by the [commissioner of insurance] to coordinate coverage for a subscriber with Federal programs.

(3) The proposed plan is established upon a sound financial and actuarial basis, including provision of an adequate working capital reserve, in view of the experience of nonprofit health care plans already in existence. If the corporation desires to amend any contract with its subscribers or desires to change any rate charged therefor, a copy of the form of the amendment or change shall be filed with the [commissioner of insurance] and shall not be effective until the expiration of [90] days after the filing thereof unless he shall sooner give to the corporation his written approval thereto. If the [commissioner] is not satisfied within the [90] day period, that a change or amendment of either the contract or the rate is lawful, fair and reasonable, he shall so notify the corporation and it shall thereafter be unlawful for the corporation to make effective the change or amendment.

Section 10. Territorial Limits of Service. No health care corporation shall operate a health care plan outside the territorial boundaries defined in its articles of incorporation or any amendments thereto, or shall accept as a subscriber to its health care plan a person residing outside the territorial boundaries; but the employment by a subscriber in case of emergency, of a physician, dentist, surgeon, hospital or other medical personnel or institution outside the territorial boundaries and the cash reimbursement of the subscriber by the corporation is not an operation of the plan outside such territorial boundaries.

Section 11. Fees. Every corporation subject to this act shall pay to the [commissioner of insurance] the following fees:

(1) For filing a copy of its articles of incorporation, [$];

(2) For filing each annual report, [$];

(3) For each certificate of authority or license, or any certified copy thereof, [$].

Section 12. Annual Report. Every corporation subject to this act shall annually, on or before the first day of March, file a report, verified by an officer of the corporation, with the [commissioner of insurance], showing its condition on the last day of the preceding calendar year, on forms prescribed by the [commissioner]. The report shall include:

(1) The financial statement of the corporation, including its balance sheet and receipts and disbursements for the preceding year;

(2) A list of the names and residence addresses of all its officers and trustees; and the total amount of expense reimbursement to all officers and trustees;

(3) The number of subscribers' contracts or certificates issued by the corporation and outstanding;

(4) A list of physicians and dentists with which the corporation has agreements, setting forth their professional qualifications.

(5) The number and type of services covered under the contract or certificate provided during the year.

Section 13. Money Advances to the Corporation. Any trustee, officer, or member of any corporation subject to this act, or any other person, may advance to the corporation any sums of money necessary for its business or to enable it to comply with any requirement of law. These moneys, and the interest thereon not exceeding [ ] per cent per annum, as may have been agreed upon, shall not be a liability of or a claim against the corporation or any of its assets, except as provided in this section, and shall be repaid only out of the surplus earnings of the corporation. This section does not affect the power to borrow money which any corporation possesses under other laws. No commission or promotion expenses shall be paid by the corporation in connection with the advance of any money to the corporation. The amount of any advance that has not been repaid shall be reported in each annual statement of the corporation.

Section 14. Examination by [Commissioner of Insurance]. The [commissioner of insurance], or a person appointed by him for that purpose, may make an examination of the affairs of any health care corporation subject to this act, as often as he deems it expedient for the protection of the interests of the people of this state but not less frequently than once each three years. Every health care corporation, its officers, and its agents shall submit their books and business to the examination and in every way facilitate it.

For the purpose of the examination, the [commissioner] or other appointed person may administer oaths to and examine the officers and agents of health care corporation concerning its business and affairs. If the [commissioner] deems it to the interest of the public, he may publish the result of the investigation in a newspaper printed at the seat of government and of general circulation in the state, and also in a newspaper printed in the county in which the principal office of the corporation is located. The expenses of examination of each health care corporation shall be paid by the corporation.

Any rehabilitation, liquidation, conservation, or dissolution of a health care corporation shall be conducted under the supervision of the [commissioner], who shall have all power with respect thereto granted to him under the law governing the rehabilitation, liquidation, conservation, or dissolution of insurance companies generally.

Section 15. Causes for Revocation of Certificate or License. The [commissioner of insurance] shall revoke any certificate or license, if he finds that any of the following situations exist:

(1) The corporation is operating in contravention of its articles of incorporation or any amendments thereto, of its code of regulations and bylaws, or of its health care plan;

(2) The corporation is unable to fulfill its obligations under outstanding contracts or certificates which it has issued to subscribers;

(3) The corporation has failed to comply with this act;

(4) The corporation is not operating a bona fide health care plan imparting quality medical care under such conditions as the [commissioner] deems to be in the public interest;

(5) The existing contracts and the rates therefor between the corporation and the subscribers are not fair and reasonable and do not provide comprehensive health coverage without regard to health or age, except in accordance with regulations prescribed by [commissioner of insurance] to coordinate coverage for a subscriber with Federal programs.

(6) The plan is not being operated upon a sound financial and actuarial basis, in view of the experience of nonprofit health care plans already in existence.

Section 16. Finding on Grant or Revocation of Certificate or License; Review. The finding of the [superintendent of insurance] in granting or revoking a certificate of authority or license under this act shall be in writing, and shall state the facts upon which his action is based. The [superintendent] shall immediately mail a copy of the findings to the applicant for or holder of such certification of authority or license at the addresses on file in the office of the [superintendent].

The action of the [superintendent] in granting or revoking the certificate of authority or license shall be subject to review in accordance with [the state administrative procedure act].

Section 17. Payroll Deductions for Public Employee Subscribers. An employee of the state, of any political subdivision or district of the state, or of any institution supported in whole or in part by the state may authorize the deduction from his salary or wages of the amount of his subscription payments to any corporation provided for in this act. The authorization shall be evidenced by approval of the head of the department, division, office, or institution in which the employee is employed.

In the case of employees of the state, the authorization shall be directed to and filed with the [auditor] of the state. In the case of employees of a county, municipal corporation, township, or other political subdivision or district of the state, the authorization shall be directed to and filed with the [auditor] or other fiscal officer of the county, municipal corporation, township, or other political subdivision or district. In the case of employees of any institution supported in whole or in part by the state, the authorization shall be directed to and filed with the [auditor] or other fiscal officer of the institution.

Upon the filing with him of the authorization, the [auditor] or fiscal officer shall draw a warrant, in favor of the health care corporation referred to in the authorization, for the amount covering the sum of the deductions thereby authorized.

Section 18. Acceptable Payments. Each corporation subject to this act may accept from governmental agencies, or from private agencies, corporations, associations, groups, or individuals, payments covering all or part of the cost of contracts entered into between the corporation and its subscribers.

Section 19. Cancellation or Transfer of Subscription. Corporations subject to this act shall not cancel or refuse to transfer subscribers from a group to an individual basis except for non-payment of subscription contracts, and notice of moneys due shall be in writing.

Section 20. Limitation on Use of Terminology. No corporation holding a certificate of authority or license or its plan shall use in its name, contracts, or literature any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in the state.

Section 21. Investment of Idle Funds. The funds of a health care corporation shall be invested only in securities permitted by the laws of this state for the investment of capital surplus and accumulations of life insurance companies.

Section 22. Penalty for Violations. **Whoever violates any section of this act, or makes any false statements with respect to any report or statement required by it, shall be fined not less than [ ] nor more than [ ] dollars for a first offense; for each subsequent offense such person shall be fined not less than [ ] nor more than [ ] dollars or imprisoned not less than [ ] days nor more than [ ] years, or both.**

Section 23. Separability. **[Insert separability clause.]**

Section 24. Effective Date. **[Insert effective date.]**

61-10-00

DISTRICTS FOR SPECIALIZED EDUCATIONAL FACILITIES

The quality of education often is directly related to specialization of teaching and associated personnel. Specialization of both personnel and curriculum in turn are directly related to the economies of scale attainable by the school system. A school district serving a small population may not have a sufficient number of pupils enrolled in any one vocational training or college preparatory program to justify the cost of providing specialized teachers or separate classes. When the unit costs of specialized education are prohibitive, the small district can offer only general common-denominator training that may not prepare its pupils adequately for either employment or college, and provides little or nothing for the physically and mentally handicapped.

By utilizing multidistrict facilities, or "educational parks," some school districts provide specialized educational programs, equipment, and personnel at a reasonable cost. The establishment of these facilities and services may be very costly, entirely beyond the financial capacity of the poorer districts, and a substantial burden even for wealthy districts.

The following draft legislation and constitutional amendment authorize the creation of districts for specialized educational facilities to make available, on a multidistrict basis, facilities and services for special educational programs. The draft bill provides for the establishment of these districts after the State educational agency has determined the need for special educational programs (vocational training and college preparatory programs, or specialized programs and services for disadvantaged children). The act permits school districts to enter into contracts to form districts for specialized educational facilities. These contracts may be amended to include additional school systems.

A board of trustees, appointed by the contracting school districts, would be the governing body of a special facility district. Subject to review by the State educational agency, the board may establish, operate, and regulate the facilities, programs, and services provided by the district.

Finally, the act authorizes school districts to issue bonds to finance the construction and acquisition of physical facilities for use by districts for specialized educational facilities. The act also provides for State financial aid incentives for the creation of these districts.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act concerning the establishment of districts for specialized educational facilities."]

Section 1. Purpose. The purpose of this act is to provide special educational programs to the children of [local] school districts through the establishment of districts for specialized educational facilities.

Section 2. Definitions. (1) "Special educational programs" means vocational training and college preparatory programs or specialized programs or services designed to improve or accelerate the education of children whose educational achievement has been or is being restricted by physical, economic, or social disadvantages.

(2) "District for specialized educational facilities" means a school district established to provide special educational programs to children of two or more [local] school districts.

Section 3. Survey. Upon its own initiative or at the request of two or more [local] school districts, the state [department of education] shall survey the need for a district for specialized educational facilities to serve the [local] school districts.

Section 4. Establishment of District for Specialized Educational Facilities. If the state [department of education], on the basis of its survey, determines that there is a need for special educational programs in the [local] school districts surveyed, the [local] school districts may enter into a contract to establish a district for specialized educational facilities, whose boundaries shall be coterminous with those of the contracting districts. The contract shall specify that the contracting districts will not conduct special educational programs that duplicate those conducted by the district for specialized educational facilities.

Section 5. Board of Trustees.[1] A district for specialized educational facilities shall be governed by a board of trustees of [ ] members representing the contracting [local] school districts. Each [local] school board shall appoint [ ] of its members to serve on the board of trustees, and a vacancy in the office shall be filled in the same manner as provided for original selection. Trustees shall serve for a [ ] year term of office, and shall not receive salary or compensation for their services. The board shall select from its membership a chairman who shall preside at all meetings. The board shall determine its own rules and order of procedure.

Section 6. Powers and Duties. Subject to the supervision of the state [department of education], the board of trustees shall:

(1) operate and regulate curriculum, conditions of instruction, physical facilities and equipment, class size and composition, transportation of pupils, and other requirements concerning necessary services and instruction;

(2) define the criteria by which [local] school districts determine whether children are eligible for special educational programs; and

(3) appoint or provide for the appointment of, and remove or provide for the removal of, all employees of the district, and fix their salaries, wages, and other compensation.

Section 7. Tuition. Subject to approval by the state [department of education], the board of trustees shall establish the amount of tuition per child which shall be paid by the contracting [local] school districts. The tuition shall be sufficient, after taking into account state financial aid and other revenues, to cover operating costs and reimburse amortization costs incurred pursuant to section 8.

Section 8. Financing Physical Facilities. Subject to the statutes governing [local] school district borrowing, the contracting [local] school districts may issue bonds to finance the construction or acquisition of physical facilities for use by the district for specialized educational facilities.

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[1] In view of recent state and federal court decisions extending the principle of one man–one vote to local governing bodies, careful consideration should be given to the representative character of the board, particularly if it is to exercise any legislative power.

Section 9. State Financial Aid. In any computation of state financial aid to [local] school districts, children participating in special educational programs approved by the State [department of education] shall be considered as part of the average daily membership count by both the district for specialized educational facilities and the contracting [local] school districts, and the head of the state [department of education] shall reflect this provision in all distributions of state education aid, whether for operating expenses or for capital outlay.

Section 10. Expansion. Upon its own initiative or at the request of the contracting [local] school districts, the state [department of education] may survey the desirability of including additional [local] school districts within the district for specialized educational facilities. If the state [department of education] determines that expansion is desirable, the contracting [local] school districts may amend the contract to [local] school districts, the amended contract to provide that the several districts shall participate on the same basis in the management, obligations, and benefits of the district for specialized educational facilities.

Section 11. Separability.

Section 12. Effective date.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

The [legislature] may provide for the establishment of districts for specialized educational facilities to make available to the children of [local] school districts specialized educational facilities, programs, and services including but not limited to vocational education, college preparation, and special programs for the disadvantaged.

61-30-00

AREAWIDE VOCATIONAL EDUCATION PROGRAMS IN METROPOLITAN AREAS

In its report on *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs,* the Advisory Commission on Intergovernmental Relations found that, relative to their population, suburban areas have almost as great a need as their central city for new and specialized vocational education programs to train dropouts and near dropouts and retain adults who are undereducated or whose occupations have become obsolete. For the Nation as a whole, the number of persons 25 years of age and older with less than four years high school (dropouts) living in suburban areas is nearly equal to the number living in the central cities. The percent of 16 and 17 year olds not enrolled in school (dropouts) is almost equal in central cities and suburbs. Furthermore, the occupational groups which are declining in relative demand (craftsmen, operatives, and laborers) are found living just as frequently, or more so, in suburbs as in central citites. Finally, unemployment is not much less in suburbs (4 percent) than in the central cities (5 percent).

Despite this need for vocational education in suburban areas, suburban school districts frequently have inadequate vocational education facilities for both high school and post-high school students. Unlike large central city school districts, individual suburban school districts often lack a sufficient number of vocational students to warrant the investment in capital facilities and administrative organization to conduct adequate vocational education and retraining programs. Many also lack resources to finance such programs. In the suburban areas as a whole, however, and certainly in the metropolitan areas a a whole, there are enough potential vocational education students to justify the necessary investment and enough resources to support it. Thus, an areawide approach to vocational education is indicated.

Since states have the basic responsibility for providing public education, they have a key role in helping assure adequate vocational education opportunities for their citizens, inside and outside metropolitan areas. It is appropriate, therefore, that they help overcome deficiencies in vocational education in metropolitan areas as an importance part of their responsibility for dealing with inadequacies throughout their jurisdiction.

Just how states go about providing necessary direction, coordination, and stimulus will necessarily vary because of wide variations in state and local sharing of responsibility for providing vocational education and retraining programs. These variations concern the relative responsibility vested in the local school boards and the state departments of education, whether administration is under an entirely separate vocational education system, and the relationship to community colleges. In any case, however, states tend to follow the same administrative pattern for post-high school technical education as they use for general education.

Organizational and financial patterns developed by the state to meet vocational education needs in metropolitan areas may also need to vary from area to area. Differences relate to size of the metropolitan area, relative dominance of the central city, number of counties constituting the area, the number, size, and needs of individual school districts within the area, and the degree to which they are individually capable of providing an adequate vocational program.

The American Vocational Association identified six general types of "area vocational education programs" in use in the states: (1) A decentralized area vocational program which makes arrangements for exchanging students among local high schools that provide different kinds of occupational training, as in Rockland County, New York; (2) Expansion of the area served by a vocational school to include contiguous nonserviced territory; (3) A separate school for vocational education built and maintained cooperative by two or more existing school districts or units; Bucks County, Pennsylvania, is an example; (4) County units established as a basis for vocational education within a county or group of counties, as in New Jersey; (5) County schools controlled and financed jointly with a state; and (6) State controlled and financed vocational schools in specified regions or areas of a state, such as in Ashland, Kentucky.

Considerable stimulus toward adoption of areawide vocational education programs in the states has been given by the Federal Government, particularly since authorization of the grant-in-aid program under the Vocational Education Act of 1963. However, a number of states still have not established the legislative framework for such areawide programs.

The first three types of areawide arrangment listed above can be undertaken in states authorizing their political subdivisions, including school districts, to enter into interlocal contracts or joint agreements. Such authority is provided in the proposal on "Interlocal Contracting and Joint Enterprises," 31-91-00.

The draft statute that follows authorizes one of the other alternative methods: use of the county as a geographic base for a vocational education system. In some states, particularly in the South, most or all local school districts are county school districts and therefore usually are already authorized to provide countywide vocation education as part of their general responsibility for public education. The draft legislation would authorize a countywide system for vocational education in states where elementary and secondary education is provided by local districts with less than countywide jurisdiction. Some states may wish to establish systems on a regional rather than a county basis. In either case, the draft is applicable only in states with a multiplicity of small school districts.

With over one-half of the nation's metropolitan areas contained within single counties, a county system is likely to prove attractive to many metropolitan areas in which small local districts are incapable individually of providing effective vocational school programs. The legislation also authorizes admission of students from neighboring districts on a charge basis, thus enabling service beyond the county line. Further expansion of the service area of a county vocational school district can be achieved, if desired, by joint action with neighboring counties under an interlocal contract or agreement. In any case, of course, existing state conditions, such as the education code, geography, and local customs, may make it desirable to combine legislation for a county district with statutes authorizing the other types of area vocational education programs cited above.

The statute authorizes establishment of a county vocational school district by (a) action of the county governing body upon recommendation of the state board of education or upon request of local school boards representing a prescribed percentage of enrolled students not served by an approved vocational program, or (b) vote of the people at a referendum initiated on petition of a prescribed percentage of voters in the area not served by an approved vocational program. The county vocational school district is not to include territory within the boundaries of local districts providing an approved vocational education program, unless such local districts vote to join the county district and the latter agrees to take them in. Taxes for support of the county vocational school district are levied only within its own boundaries rather than the entire county.

The draft statute is adapted from New Jersey Revised Statutes 18:15-30 through 18:15-58.

States interested in using the community junior college as one way of providing vocational education from the post-high school student are referred to the model "Community Junior College Act" in *Suggested State Legislation – Volume XXIV* (1965), pp. 69-79, published by the Council of State Governments.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize county vocational education school districts."]

(Be it enacted, etc.)

Section 1. Establishment of County Vocational School Districts. (a) The [county board] shall vote on the question of whether a county vocational school district shall be established in the county when it receives:

(1) a resolution of the [state board of education] that a need exists in the county for operation of county industrial, commercial, agricultural, or household arts programs; or

(2) a request in writing from [local] school districts containing not less than [ ] percent of the public school enrollment of the county not served by a system of vocational education approved for the purposes of Federal or state allotments of vocational funds by the [state commissioner of education] under regulations of the [state board of education] that such a district be established.

If the [county board] by a majority vote favors the establishment of such a district in the county, such district shall be forthwith established and maintained in the county and shall be known as the "vocational school district of the county of [ ]."

(b) At the request in writing of not less than [ ] percent of the registered voters of any county living within [local] school districts not served by a system of vocational education approved for the purpose of federal or state allotments of vocational funds by the [state commissioner of education] under regulations of the [state board of education], the [county clerk] shall submit at any general election, and shall cause to be printed upon the ballot to be voted at such election, the following question:

"Shall a county vocational school district be established in the county of [ ] pursuant to provisions of [cite this statute]?"

In squares at the right shall be placed words "Yes" and "No." Any person desiring the establishment of a county vocational school district shall mark an "X" opposite the word "Yes," and any person opposed thereto shall mark an "X" opposite the word "No."[1]

If a majority of all the ballots so voted shall favor the establishment of the county vocational school district, the district shall be forthwith established and maintained as provided in this act. The results of such election shall be returned and canvassed in the same manner and at the same time as other election returns are canvassed.

Section 2. County Districts Not to Include Certain Territory of County; Exception; Agreements; Principals, Teachers, and Employees. (a) The county vocational school district shall include within its boundaries all the territory of the county not included within the boundaries of any [local] school district if such [local] district is maintaining a system of vocational education approved for the purposes of federal or state allotment of vocational funds by the [state commissioner of education] under the regulations of the [state board of education].

(b) Notwithstanding the provisions of subsection (a) of this Section, any county vocational school district shall include the territory within the boundaries of any [local] school district referred to in subsection (a) of this section after the date of filing in the office of the [state commissioner of education] of a certified copy of a resolution adopted by the [county board] of the county subsequent to the organization of the county vocational school district and of a resolution adopted by the board of education of the [local] district setting forth the finding that it is in the best interest of the county vocational school district and of the [local] district that the county vocational school district shall include within its boundaries the territory of the [local] district.

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[1] This paragraph should be written to conform with balloting procedures in the state.

(c) The board of education of the county vocational school district and the board of education of each [local] district referred to in subsection (b) of this section are each hereby authorized and empowered to undertake and to enter into agreements of any nature whatsoever necessary, desirable, useful, or convenient for and with respect to the assumption, operation, or administration by the county vocational school district of any system of vocational education then being maintained in the [local] district, including, but not limited to, the transfer of principals, teachers, employees, pupils, or classes; the purchase, grant, transfer, or lease to the county vocational school district of any lands, schools, buildings, furnishings, equipment, apparatus, or supplies constituting part of or used in connection with the [local] system; and the making of or provision for payments, costs, or expenses in connection with any of the aforesaid, and copy of any such agreement shall be filed in the office of the [state commissioner of education].

(d) All principals, teachers, and employees of any [local] district referred to in subsection (b) of this Section who are employed in or assigned to the system of vocational education in any such district shall be transferred to an continue their respective employments in the employ of the county vocational school district from and after the date of transfer provided for in any agreement entered into pursuant to subsection (c) of this section, and their rights to tenure, pension, and accumulated leave of absence accorded under the laws of the state shall not be affected by the transfer to the county vocational school district.

Section 3. Rules for Organization and Management. The [state board of education] shall prescribe rules and regulations for the organization, management, and control of schools operated and maintained by a county vocational school district.

Section 4. Receiving Pupils from Other Districts. The board of education of county vocational school districts shall receive pupils from other school districts so far as their facilities will permit, provided a rate of tuition not exceeding the cost of such education is paid by the sending districts.

Section 5. School Year. The school year for a county vocational school district shall begin on [ ] and end on [ ].

Section 6. Board of Education; Appointment, Terms, and Vacancies.[1] A county vocational school district established in accordance with this act shall be under the control and management of a board of education consisting of five persons to be appointed by the [county board]. In making the first appointments to a board, one person shall be appointed to serve for one year, one for two years, one for three years, one for four years, and one for five years. Annually during the month of [ ], a member of the board shall be appointed to serve for a term of five years, and until the appointment and qualification of his successor.[2]

A vacancy on the board caused by the death, resignation, or removal of a member shall be reported forthwith by the secretary of the board to the [county board] which, within 30 days thereafter, and in the manner prescribed for making appointments for a full term, shall appoint a person to fill the vacancy for the unexpired term.

Section 7. Qualifications of Board Members. A member of a board of education created under the provisions of this act shall be a citizen and resident of the county and shall have been such citizen and resident for at least three years immediately preceding his becoming a member of the board.

Section 8. Organization of Boards of Education. Each board of education for a county vocational school district shall organize annually on [specify date] by election of a president and vice president, unless the [specified date of organization] shall fall on Sunday, in which case the board shall organize on the following day.

Section 9. Board a Body Corporate; Name. The body having the control and management of a county vocational school district shall be a body corporate and shall be known as and called "the board of education of the county vocational school district in the county of [ ]."

Section 10. Applicability of Laws Governing [local] School Districts and Counties. (a) County vocational school districts are subject to the statutes governing [local] school districts with respect to [powers of the board of education; approval of courses of study by the [state commissioner of education]; the making of contracts and payment of bills; advertisement for proposals for supplies or construction; and rights and privileges of teachers, principals, and members of the boards of education.

(b) In appropriating money and levying taxes for current expenses, county vocational school districts are subject to the statutes governing appropriating money and levying taxes for other purposes in the county, except that taxes for a county vocational school district shall be levied only within the boundaries of the district as determined under section 2 of this act.

(c) In the issuance of bonds, county vocational school districts are subject to the statutes governing borrowing for other county purposes, but any debt limitation or requirement for down payment

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[1] A state may prefer to have the county board serve as the board of education. Appropriate changes would need to be made in sections 6, 7, 9, 10, and 11.

[2] States having county superintendents of schools may wish to make them ex officio members of the boards.

therein shall not apply and taxes levied for the payment of principal and interest of such bonds shall be levied only within the boundaries of the county vocational school district as determined under section 2 of this act.

Section 11. Separability. **[Insert separability clause.]**

Section 12. Effective Date. **[Insert effective date.]**

61-40-00

METROPOLITAN EDUCATIONAL EQUALIZATION AUTHORITY

Shortcomings in educational programs resulting from the unequal distribution of tax resources and the unequal costs of educating children can be tackled by marshalling resources within a region rather than the entire state. If a state does not provide a fully effective statewide program for equalizing opportunity, a limited or metropolitan approach offers a method for supplementing a deficient state aid program. This metropolitan educational finance measure is designed to deal with one of the most pressing social problems of our time – the need to design a system for financing education that enables all school districts within the metropolitan area to implement the concept of equal educational opportunity. While the disparities between central city and suburbs claim most public attention, anyone familiar with the fiscal landscape of suburbia is keenly aware of the fact that it does not present a uniform picture of affluence. On the contrary, suburbia fairly bristles with contrasts between rich, poor, and middle income jurisdictions.

To create a financial environment that contributes substantially to equality of educational opportunity, four remedial financial steps should be taken.

1. To eliminate the accidents of local property tax geography, the measure set forth below would subject all taxable property within the metropolitan area to a basic school levy and thereby largely remove the possibility that industrial enclaves and local fiscal zoning will shield certain property from the legitimate burdens borne by the wider community for public schools.

2. To provide special assistance to those school districts confronted with the task of educating a disproportionately large number of "high cost" students (the educational over-burden problem), the formula for distributing the proceeds of the areawide tax would recognize and compensate for the unequal distribution of socially and culturally deprived students among the school districts within the metropolitan area.

3. To provide special assistance to those school districts hampered in their efforts to finance an acceptable level of education due to extraordinary tax demands for their municipal-type functions such as public safety, public welfare, and other public services and facilities (the municipal over-burden problem), the formula for distributing the proceeds of the areawide tax would give due weight to the overall local tax burden (school and non-school) borne by taxpayers in each local school district.

4. To assure that state aid to local school districts within the metropolitan area reinforces this compensatory approach, this measure would direct the head of the State education department to channel all general state aid compensatory funds for local school districts within the metropolitan region through the regional financing authority. These state aid funds could then be distributed in the same equalizing fashion as the locally derived funds are distributed among local school districts.

The proposal embodied in the following draft legislation would increase fiscal support of the schools in greatest need while keeping school policy and school administration in the hands of the area's individual school districts.

It will *not* interfere with the right of each local school district to (a) select its own superintendent, (b) to chart its own educational policy consistent with state law and (c) to impose a supplemental rate if it wants to underwrite a program above the areawide standard.

In order to match resources with educational needs, the proposed legislation directs the Governor to create a metropolitan educational equalization authority if the chief educational officer of the State finds that significant disparities exist among school districts in the metropolitan area. The proposal sets forth specific guidelines for determining the existence of significant disparities between resources and educational needs.

In addition, equalization guidelines are provided for the members of the metropolitan equalization authority to follow in drawing up a specific formula for distributing the proceeds of the areawide tax among the constituent school districts. The guidelines place heavy emphasis on the need to compensate for both educational and municipal over-burden factors.

To insure that a substantial degree of equalization is effected, the draft legislation sets forth a "standby" distribution formula that becomes operative unless representatives of the local school boards representing at least 80 percent of the school children within the metropolitan area concur in their own formula for inter-district equalization. As an additional incentive to encourage agreement on a local formula, the draft bill provides that state aid be channeled to local districts in accordance with a local formula approved with the concurrence of representatives of school districts containing a large proportion of the combined pupil enrollment.

In some states, a constitutional amendment may be necessary prior to the enactment of this legislation. A suggested amendment is set forth below, following the proposed legislation.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to Authorize Metropolitan Educational Equalization Authorities."]

(Be it enacted, etc.)

Section 1. Purpose. **The purpose of this act is to lessen fiscal disparities among the various school districts within the same metropolitan area and thereby more nearly equalize educational opportunity for all public school students residing in that area.**

Section 2. Urban Metropolitan School Districts. **Within each Standard Metropolitan Statistical Area (SMSA), as defined by the U. S. Bureau of the Census,[1] that lies wholly or partly in this state, the [chief state school officer] shall designate as an urban-metropolitan school district any local school district in which [50] percent or more of the student body reside in the urbanized area of the SMSA.**

Section 3. Determination of Resources and Needs. **The [chief state school officer] shall determine and report to the governor the percentage by which each urban-metropolitan district deviates from the average of all urban-metropolitan districts within a Standard Metropolitan Statistical Area with respect to the following indicators of resources and needs:**

(1) equalized property tax value per pupil;

(2) current operating expenditures per pupil;

(3) proportion of students who fall below minimum educational competence as determined on the basis of standardized tests authorized for use by the [chief state school officer] ;

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[1] States may wish to establish the definition of an urbanized area in accordance with their own demographic, economic, and jurisdictional criteria.

(4) proportion of school age population not attending school;

(5) proportion of educationally deprived students as defined under Title I of Public Law 89-10, 20 U.S.C.A. 241c.

Section 4. Metropolitan Educational Financing Districts. Whenever, pursuant to section 3, an urban-metropolitan school district is reported to fall at least [25] percent below the average of all urban-metropolitan school districts within a SMSA with respect to any of the indicators of resources and needs contained in subdivision (1), (2), (3), (4), or (5) of section 3, the governor shall establish a metropolitan educational financing district embracing all urban-metropolitan school districts within the SMSA.

Section 5. Metropolitan Educational Equalization Authority. The governor shall create, for each metropolitan educational financing district, a metropolitan educational equalization authority that shall be comprised of [at least one][1] school board member appointed by the school board of each urban-metropolitan school district in the metropolitan educational financing district. The authority shall convene for purposes of carrying out the provision of this act upon notification by the governor that a metropolitan educational equalization authority has been created.

The authority shall meet at least once each year at the time and in the place its members may determine and may meet at other times at the call of the chairman. The members of the authority shall elect a chairman and may make and alter by-laws for its organization and the conduct of its affairs. A majority of the members from the urban-metropolitan school districts represented in the authority constitutes a quorum for the transaction of the business and the exercise of the power of the authority.

Section 6. Determination of Levy Rate. A metropolitan educational equalization authority shall levy a tax rate which when applied to the equalized assessed value of taxable property in the metropolitan educational financing district will produce an amount equivalent to the combined amount required by [cite appropriate state school aid statutes] to be raised from local revenue sources in each urban-metropolitan school district.

Section 7. Distribution Formula. (a) *Adoption of Formula.* The metropolitan educational equalization authority shall distribute the proceeds of the levy to each urban-metropolitan school district in accordance with a formula adopted by the authority. The formula shall equalize, as nearly as possible, educational opportunity by taking into account educational cost and tax burden differentials among local school districts within the metropolitan area.

(b) *Consideration of High Cost Students.* In order to compensate the urban-metropolitan school districts which have a disproportionately large number of high cost students, the distribution formula shall give due weight to the relative proportion of school age children in each district that: (a) fall below minimum educational competence, (b) fail to complete twelve grades prior to reaching age [19] and (c) are counted as educationally deprived children for purposes of determining the grant from the Federal government under Title I of Public Law 89-10, 20 U.S.C.A, 241c.

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[1] Representation should be consistent with constitutional and statutory requirements regarding representation on elected local governing bodies.

(c) *Consideration of Local Tax Burdens.* In order to compensate the urban-metropolitan school districts hampered in the competition for tax dollars by demands for expenditures on public safety, public health, public welfare, and other municipal-type services and facilities, the distribution formula shall also give due weight to the overall local tax burden in each urban-metropolitan district.

(d) *Lack of Concurrence on a Formula.* Unless the representatives of the urban-metropolitan school districts containing at least [80] percent of the combined pupil enrollment of a metropolitan educational financing district concur in a formula, the proceeds of the levy provided for in section 6 shall be distributed among urban-metropolitan school districts as follows:

(i) [50] percent of the proceeds in the proportion that the school age population in each component school district bears to the total school age population in the metropolitan educational financing district, and

(ii) [50] percent of the proceeds in the proportion that each component district shares in the funds for educationally deprived children provided to all component districts comprising the metropolitan educational financing district under Title I of Public Law 89-10, 20 U.S.C.A. 241c.

(e) *State Educational Aid Funds.* If a metropolitan educational equalization authority approves a formula with the concurrence of representatives of urban-metropolitan school districts containing more than [80] percent of the combined pupil enrollment, the [chief state school officer] shall disburse any state educational aid entitlement of an urban-metropolitan school district to the metropolitan educational equalization authority for distribution in accordance with the approved formula.

Section 8. Responsibilities of the [chief state school officer]. The [chief state school officer] shall collect, compile, and make available to a metropolitan educational equalization authority, all records necessary to determine an equitable distribution formula. The records shall include, for each local school district: (1) the number of pupils falling below minimum educational competence as established by standardized tests, (2) the number of children under [19] not attending school who have not completed twelve grades, (3) the number of children counted in determining a grant from the Federal government under Title I of Public Law 89-10, 20 U.S.C.A. 241c, and (4) the relative local tax burden for education and non-educational purposes.

Section 9. Tax Collections. The taxes levied pursuant to this act shall be assessed and collected in the same manner as other taxes and the proceeds shall be deposited to the credit of the metropolitan educational equalization authority.

Section 10. Permission to Levy Additional Taxes. Nothing in this act shall preclude any individual school district or municipality within a metropolitan educational financing district established by this act from levying additional taxes for the support of its own school program.

Section 11. Separability [Insert separability clause].

Section 12. Effective date [Insert effective date].

Suggested Constitutional Amendment

Section 1. The [legislature] may authorize the establishment of educational financing districts consisting of one or more counties or parts thereof and may authorize a uniform property tax rate within the districts for the support of public education.

Section 2. [All parts of the Constitution in conflict with this amendment are hereby repealed.] [sections (identify those sections of Constitution to be repealed) are hereby repealed.]

Section 3. [Insert appropriate language, consistent with state election laws, for submission of the proposed amendment to the electorate.]

87-20-00

STATE WATER RESOURCES PLANNING AND COORDINATION

Traditionally, water pollution control, water allocation, water resource development, and other phases of the overall water resource problem have been administered independently by different agencies and independent boards within the state governments, thus providing inadequate attention to long range planning and policy coordination. In addition, the regulation and development of water resources have often been complicated by the fact that political boundaries often have not followed the natural boundaries of watersheds which are the logical water resource planning units. Now, with the rapidly expanding and often competing needs of agriculture, industry, recreation, and urban areas for more clean water, there is an urgent need to assure that these demands are met in a coordinated way. Recognizing these problems, the Council of State Governments' 1957 report on *State Administration of Water Resources,* called for the establishment of comprehensive water resources programs in each of the states.

Many of the difficulties and needs set forth in the Council's report have been further documented in a report of the Advisory Commission on Intergovernmental Relations, entitled *Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas.* In that report the Commission recommended establishment of a unit of state government for overall state water resources planning and policymaking. The following draft legislation would implement that recommendation and would be completely consistent with the earlier recommendation of the Council.

Under this draft legislation, authorization would be provided for the placing of overall water resource planning, policymaking, and coordination responsibility in a single unit of state government. This unit of state government would be directed to give consideration to the water resource requirements and problems of all water interests in the state and means by which these interests can be assured of representation on interstate water agencies to which the state may be a party.

As the level of government with basic responsibility for resource development, the states have an excellent opportunity to establish water resource policies, planning procedures and coordination that is comprehensive enough to balance multiple uses with one another and overcome jurisdictional problems.

Some states already have agencies combining water resources programs as well as coordinating functions in a single water resources agency. This agency may be a separate Department of Water Resources as in North Carolina, or a Division of Water Policy and Supply in the Department of Conservation and Economic Development as in New Jersey. Other examples of state water resources organizations which combine operating programs as well as policy coordinating activities in a single agency may be found in the states of California, Connecticut, and Maryland.

Some states, however, prefer to establish a staff level agency, responsible to the governor for studying and developing policies spanning the programs of the many state agencies concerned rather than to reorganize their water resources agencies by transferring individual bureaus and units to a new consolidated water resources organization.

If the staff agency approach is followed, leaving operating functions in their present locations, the following draft legislation, based largely on an Oregon law, may be used as a guide. Other states which have followed this general approach include Missouri, Kansas, Ohio, and Rhode Island.

The draft legislation would effectively provide the governor and the legislature with technical assistance in directing the coordinated use, development, and regulation of the water resources of the state and in establishing uniform policies to minimize conflicts between the various operating agencies and water interests of the state. It would (1) vest the planning and coordinating function in a single executive agency responsible to the governor, (2) allow for participation in the development of recommended water policies by affected

or interested state agencies and others, (3) give the governor authority to adopt comprehensive and coordinated water resource plans and policies in accordance with the provisions of this act as a guide for executive agencies and to propose desirable legislative modifications, and (4) leave the operating programs, such as water pollution control, development of new water supplies, and allocation of water rights, to be administered by the agencies now charged with those responsibilities in accordance with existing legislation.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing for the vesting of responsibility for overall state water resource planning, policy formulation and program coordination in a single agency."]

(Be it enacted, etc.)

Section 1. Short Title. **This act may be cited as the [state] Water Resource Planning and Coordination Act.**

Section 2. Declaration of Policy. **(a) The legislature recognizes that: (1) the maintenance of the present level of economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority; (2) the proper utilization and control of the water resources of this state can be best achieved through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources and through other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources, all coordinated by a single state agency; and (3) the economic and general welfare of the people of this state is impaired by the exercise of uncoordinated single-purpose power or influence over the water resources of this state or portions thereof by diverse public agencies and diverse statutory declarations of water resource policies resulting in friction and duplication of activity among public agencies and confusion as to what is primary and what secondary beneficial use of control of such water resources and in a consequent failure to utilize and control such water resources for multiple purposes for the maximum beneficial use and control possible and necessary.**

(b) The legislature, therefore, finds that it is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote, and secure the maximum beneficial use and control of such water resources be coordinated by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use

and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

Section 3. Planning and Coordination Staff. The Director of the Office of State Water Resources [or the head of such other agency or unit of the state government as the governor may designate] [1] (hereinafter referred to as the Director) shall have the responsibility for leadership and direction of a program to implement the legislative policy declared by this act, and may employ such additional staff and other resources as may be available to him and necessary to the exercise and performance of duties and responsibilities conferred by this act.

Section 4. Duties and Responsibilities. (a) *Assistance to Governor.* The Director shall advise and assist the governor in: (1) formulating and establishing a comprehensive water resources policy for the state; including coordination of policies and activities among the state departments and agencies; (2) developing and establishing policies and proposals designed to help meet and resolve special problems of water resource use and control within or affecting the state, including consideration of the water resource requirements and problems or urban areas; (3) reviewing the actions and policies of state agencies with water resource responsibilities to determine the consistency of such actions and policies with the comprehensive water policy of the state; (4) reviewing any project, plan or program of federal aid affecting the use or control of any waters within the state; (5) developing policies and recommendations to assure that the interests of its urban and other areas are provided for in the state's representation on interstate water agencies; (6) recommending to the legislature any changes of law required to implement the legislative policy declared in this act; and (7) such other water resources planning, policy formulation and coordinating functions as the governor may designate.

(b) *Studies and Surveys.* The Director is authorized to carry out such studies, inquiries, surveys, or analyses as may be relevant to his duties in assisting the governor and in helping to implement the legislative policy declared in this act, and in developing recommendations for the legislature. For these purposes, the Director shall have full access to the relevant records of other state departments and agencies and political subdivisions of the state, and may hold public hearings, and may cooperate with or contract with any public or private agencies, including educational, civic, and research organizations. Such studies, inquiries, surveys, or analyses shall incorporate and integrate, to the maximum extent feasible, plans, programs, reports, research, and studies of federal, state, interstate, regional, metropolitan and local units, agencies and departments of government.

(c) *Consultations.* In developing recommendations for the governor relating to the use and control of the water resources of the state, the Director shall: (1) consult with representatives of any

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[1] The suggested office is a staff organization to aid the governor rather than an operating agency. Alternatively the office could be placed in an existing department of administration or department of planning already exercising coordinative functions for the governor, and in any case should have close contact with such departments.

federal, state, interstate, or local units of government which would be affected by such recommendations; and (2) be authorized to appoint such interdepartmental and public advisory boards as necessary to advise him in developing policies for recommendation to the governor.

(d) *Local Assistance.* The Director shall encourage, assist, and advise regional, metropolitan, and local governmental agencies, officials, or bodies responsible for planning in relation to water aspects of their programs, and shall assist in coordinating local water resources activities, programs, and plans.

(e) *Reports.* The Director may publish reports, including the results of such studies, inquiries, surveys, and analyses as may be of general interest, and shall make an annual report of his activities under this act to the governor and the legislature.

***Section 5. Planning Objectives.* In exercising his responsibilities under this act, the Director shall take into consideration the need for:**

(1) adequate supplies of surface and ground waters of suitable quality for domestic, municipal, agricultural, and industrial uses;

(2) water quality facilities and controls to assure water of suitable quality for all purposes;

(3) water navigation facilities;

(4) hydroelectric power;

(5) flood damage control or prevention measures, including flood plain zoning, to protect people, property, and productive lands from flood losses;

(6) land stabilization measures;

(7) drainage measures, including salinity control;

(8) watershed protection and management measures;

(9) outdoor recreational and fish and wildlife opportunities; and

(10) any other means by which development of water and related land resources can contribute to economic growth and development, the long-term preservation of water resources, and the general well-being of all the people of the state.

***Section 6. Separability.* [Insert separability clause.]**

***Section 7. Effective Date.* [Insert effective date.]**

87-51-00

CONTROL OF URBAN WATER SUPPLY AND SEWERAGE SYSTEMS

With increasing concentrations of population in urban areas, there is a growing need for planning and provision of reliable domestic water supply and waste disposal systems. Water problems are especially critical on the fringes of urban areas where improper or indiscriminate reliance on individual wells or waste disposal systems can create future problems. Sound planning and development of water supply and sewerage facilities is essential to assure the availability of an adequate supply of safe water, prevent pollution, eliminate health nuisances and hazards, and conserve ground water. It is also important for encouragement of economical and orderly development of land for residential, industrial, and other purposes, since the type and location of water and sewerage facilities is a critical determinant of land use.

From the standpoint of adequate planning and provision of water supply and sanitation, the various parts of an urban or metropolitan area are likely to require different kinds of water supply and sewerage facilities. Variations depend on such conditions as population density, lot size, land contour, soil porosity, and ground water conditions. Thus in some portions of urban communities, community water supply and sewerage systems are essential. In others, individual water supply and sewage disposal systems (private wells and septic tanks) may be permissible temporarily if provision is made for connection to a community system. In such cases, it is important that these individual facilities be adequate and safe, and that they be discontinued once the community system becomes available. In still other parts of the urban area conditions are amenable to installation of individual water supply and sewage disposal systems for an indefinite period, provided there is proper assurance as to their safety and adequacy by the state health department. The proper selection of, or balance among, public systems and individual water wells and septic tanks can best be achieved if an appropriate state statutory framework for making the decision exists.

In view of the need for adequate water supply and sewerage system planning and control and the varying requirements of different parts of urban areas, the Advisory Commission on Intergovernmental Relations in its report, *Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas*, has recommended that "legislation be enacted endowing the appropriate state and local agencies with regulatory authority over individual wells and septic tank installations, with a view to minimizing and limiting their use to exceptional situations consistent with comprehensive land use goals." Three model state statutes to meet these needs have been developed by the U.S. Public Health Service with the assistance of a special advisory committee that included representatives from the Public Health Service, the Commission, the Housing and Home Finance Agency, the National League of Cities, American Society of Planning Officials, National Association of Counties, National Association of Home Builders, Water Systems Council, Conference of State Sanitary Engineers, and the Septic Tanks Industry. The first statute, "The Urban Water Supply and Sewerage Systems Act," has been endorsed by a number of groups including the State and Territorial Health Officers, the Conference of State Sanitary Engineers, and the Interstate Conference on Water Problems.

"The Urban Water Supply and Sewerage Systems Act" provides for the development of an official community plan for water and sewerage systems consistent with the needs of the area. Such plans for each community would delineate the areas within which community systems must be provided, the areas where individual systems may be used on an interim basis, and the areas where individual systems would be generally permissible.

Under the statute, designated municipalities are required to submit to the state department of health, usually within one year, a "community plan" for water supply and sewerage systems. The plan must assign each portion of the area covered to one of three categories of water and sewerage service:

(1) Portions where community water supply and sewerage systems *must* be provided to protect public health. The systems must be designed to permit connection to a larger system when the latter becomes available.

(2) Portions where individual water supply and sewage disposal systems may be installed during an interim period pending availability of programmed community water supply and sewerage systems. The interim individual systems must be adequate and safe, and provision must be made for discontinuing them when the community systems become available.

(3) Portions where individual water supply and sewage disposal systems may be installed and used for an indefinite period, if the state health department judges their use to be adequate and safe.

Criteria for determining under which category each of the portions of the urban area shall be classified include: present and future density of population, lot size, land contour, porosity and absorbency of soil, ground water conditions, type of construction of water supply and sewerage systems, and size of the proposed development.

The community plan must also: (1) provide for orderly extension and expansion of community water supply and sewerage systems; (2) assure adequate sewage treatment facilities for safe and sanitary treatment of sewage and other liquid waste; (3) delineate portions of the urban areas which community systems may be expected to serve within five years, ten years, after years, and any portions in which provision of such services is not reasonably forseeable; (4) establish procedures for delineating and acquiring necessary rights-of-way or easements for community systems; and (5) set forth a time schedule and propose methods of financing construction and operation of each programmed community system and the estimated cost.

The community plan must be submitted for review to official planning agencies having jurisdiction, including any areawide planning bodies, for consistency with programs of planning for the urban area, and the reviews must be transmitted to the state health department with the proposed plan.

The statute authorizes the state health department to adopt regulations to: (1) control, limit, or prohibit installation and use of individual and community water supply systems and sewerage systems; (2) establish procedures for preparation, submission, revision, review, and approval or disapproval of community plans; (3) prescribe the minimum contents of the plan; and (4) describe the criteria on which approval of the plans shall be based.

The state health department has authority to approve or disapprove community plans; and all its actions, including disapprovals, are subject to judicial review.

The health department is also empowered by the act to provide technical assistance to municipalities in preparing and coordinating community plans; to administer state grants to municipalities for preparing community plans; and to accept and administer federal grants.

The act makes installation of water supply and sewerage systems dependent on existence of a community plan. It provides that within a specified time after submission of the community plan, no individual or community water supply or sewerage system may be installed in the areas covered by the community plan unless a community plan has been approved for such areas, and the systems and installations are consistent with the plan. Further, no state or local agencies may grant building permits or approve subdivision plans, maps, or plats unless individual or community water supply and sewerage systems covered by such permits, plans, maps, or plats are found to conform with the community plan.

The second statute, "Water Well Construction and Pump Installation Act," regulates the development of ground water systems and the location, construction, repair, and abandonment of water wells, and the installation and repair of pumps and pumping equipment to assure protection against possible contamination and to maintain a safe and potable water supply. The third statute, "Individual Sewage Disposal Systems Act," regulates the planning, design, construction, installation, operation, and maintenance of individual disposal systems.

The department administering the Water Well Act is authorized to designate areas within which prior permission for the construction or abandonment of wells or the installation of pumping equipment will be required. In all other areas the department must be notified of such work. There is provision for licensing water well and pump installation contractors. Under the provisions of the "Sewage Disposal Systems Act" permits issued by municipalities are required for the installation, alteration, or repair of individual sewage disposal systems. There is an optional provision for the licensing of installers. Both acts include inspection and enforcement procedures and hearing and judicial review provisions. The department is authorized to delegate any of its authority under the act to any municipality and it is provided that local law establishing standards affording greater protection than those established pursuant to the act shall prevail within the locality.

Such state legislation would go a long way toward properly meeting the critical water needs of urban areas, assure sound and orderly urban development, protect public health, and provide a reasonably economical and long term solution to the problems of obtaining and disposing of water.

Suggested Legislation

a. URBAN WATER SUPPLY AND SEWERAGE SYSTEMS

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Short Title. This act shall be known and may be cited as the "[state] Urban Water Supply and Sewerage Systems Act."

Section 2. Findings and Policy. (a) The legislature finds that properly planned and installed individual and community water supply systems and sewerage systems in and near urban areas:

(1) assure the availability of adequate and safe water for various purposes, including drinking and culinary use;

(2) promote the health and welfare of citizens of this state by preventing the pollution of ground and surface water;

(3) eliminate nuisances and hazards to the public health;

(4) contribute to proper conservation and use of ground water;

(5) encourage economical and orderly development of land for residential, industrial, and other purposes, and are essential to the orderly processes of urban growth.

(b) It is, therefore, declared to be the public policy of this state to eliminate and prevent health and safety hazards and to promote the economical and orderly development and utilization of water and land resources of this state by encouraging planning and provision for adequate individual and community water supply systems and sewerage systems and by providing for the standards and regulations necessary to accomplish these purposes.

Section 3. Definitions. As used in this act:

(1) "Community plan" means a comprehensive plan and all amendments and revisions thereof

for the provision to a municipality or municipalities of both adequate water supply systems and sewerage systems, adopted by a municipality or municipalities having authority to provide or having jurisdiction over the provision of such systems.

(2) "Community sewerage system" means any system, whether publicly or privately owned, serving two or more individual lots, for the collection and disposal of sewage of industrial wastes of a liquid nature, including various devices for the treatment of such sewage or industrial wastes.

(3) "Community water supply system" means a source of water and a distribution system including treatment facilities, whether publicly or privately owned, serving two or more individual lots.

(4) "Department" means the [designated agency presently having authority to regulate sanitary practices within the state, usually the state department of health].

(5) "Individual sewage disposal system" means a single system of sewers and piping, treatment tanks, or other facilities serving only a single lot and disposing of sewage or industrial wastes of a liquid nature, in whole or in part, on or in the soil of the property, into any waters of this state, or by other methods.

(6) "Individual water supply system" means a single system of piping, pumps, tanks, or other facilities utilizing a source of ground or surface water to supply only a single lot.

(7) "Lot"[1] means a part of a subdivision or a parcel of land used as a building site or intended to be used for building purposes whether immediate or future, which would not be further subdivided.

(8) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to state law, or any combination thereof acting cooperatively or jointly.

(9) "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects with the bacteriological and chemically quality conforming to applicable standards of the department.[2]

(10) "Subdivision"[3] means the division of a single tract or other parcel of land, or a part thereof, into two or more lots, for the purpose, whether immediate or future, of sale or of building development, and shall also include changes in street lines or lot lines; but division of land for agriculture purposes into parcels of more than [ ] acres not involving any new street or easement of access, shall not be included within the meaning of "subdivision."

[1] The definitions should be consistent with any definitions of the same terms established in the state's planning, subdivision control, and zoning enabling acts. There should be included necessary additional provisions to accommodate the definitions to condominium and cooperative developments where there are individual interests in land occupied by multiple dwellings and multiple occupancy developments on a single lot.

[2] In the absence of available state standards, PHS Drinking Water Standards (PHS Publication 956) are recommended.

[3] See footnote 1.

Section 4. Community Plans. (a) Each municipality designated under subsection 5(e) of this act shall, after reasonable opportunity for public hearing thereon, submit to the department a community plan within the time prescribed by the department pursuant to subsection 6(a) of this act, and shall from time to time submit amendments or revisions of such plan as it deems necessary or as may be required by the department.

(b) Within an appropriate area for development of a single plan for water and sewerage systems, the required community plan, any amendment or revision thereof may be submitted jointly by the municipalities concerned.

(c) Every community plan shall delineate, in accordance with applicable regulations adopted by the department pursuant to section 5 of this act, those areas where:

(1) (A) community water supply systems must be provided;

(B) individual water supply systems may be installed and used during an interim period pending the availability of a programmed community water supply system;

(C) individual water supply systems may be installed and used for an indefinite period.

(2) (A) community sewerage systems must be provided;

(B) individual sewage disposal systems may be installed and used during an interim period pending availability of a programmed community sewerage system;

(C) individual sewage disposal systems may be installed and used for an indefinite period.

(d) In addition, every required community plan shall:

(1) provide for the orderly expansion and extension of community water supply systems and community sewerage systems in a manner consistent with the needs and plans of the area;

(2) provide for adequate sewage treatment facilities which will prevent the discharge of untreated or inadequately treated sewage or other waste of a liquid nature into any waters, or otherwise provide for the safe and sanitary treatment of sewage and other liquid waste;

(3) delineate with all practicable precision those portions of the municipality in which community systems may reasonably be expected to serve within five years, within ten years, and after ten years, and any portions in which the provision of such services is not reasonably foreseeable, taking into consideration all related aspects of planning, zoning, population estimates, engineering, and economics, and any existing state plan affecting the development, use, and protection of water resources;

(4) establish procedures for delineating and acquiring on a time schedule, pursuant to subsection (d)(3) of this section, necessary rights-of-way or easements for community systems;

(5) set forth a time schedule and proposed methods of financing the construction and operation of each programmed community system together with the estimated cost thereof;

(6) be submitted for review to official planning agencies having jurisdiction, including a comprehensive planning agency with areawide jurisdiction if one exists, for consistency with programs of planning for the area, and such reviews shall be transmitted to the department with the proposed plans; and

(7) include provision for periodic amendment or revision of the plan.

Section 5. Administration – Department Powers and Functions. (a) The department shall adopt and from time to time amend rules and regulations which provide for:

(1) the control, limitation, or prohibition of installing, and use of individual and community water supply systems and sewerage or sewage disposal systems in accordance with the provisions of this act;

(2) the procedures in connection with the preparation, submission, revision, review, and approval or disapproval of community plans;

(3) the minimum contents of such plans;

(4) the criteria upon which approval of such plans shall be based; and

(5) such other matters as may be necessary or appropriate to the administration of this act.

(b) Such regulations in providing criteria for the delineation in community plans of areas pursuant to subsection 4(c) of this act, and for the approval of community plans, shall be formulated so as to implement the policies of this act as stated in section 2, and shall require consideration of the present and future density of population, size of the lots, contour of the land, porosity and absorbency of the soil, ground water conditions and variations therein from time to time and place to place, including availability of water from unpolluted aquifers or portions thereof, type of construction of water supply systems and sewerage systems, size of the proposed development, and other pertinent factors.

(c) Such regulations shall:

(1) require the installation of community water supply systems and community sewerage systems and the connection of all premises thereto, if such systems are reasonably necessary to protect the public health, giving due consideration to such factors as are set out in subsection 5(b) of this act. Such systems shall be designed so as to permit connection to a larger system at such time as the larger system becomes available;

(2) permit, in areas where community water supply systems or community sewerage systems are not available nor required to be installed under subsection 5(c)(1) of this act, but are

programmed to become available within a reasonable period of time not to exceed [ ] years,[1] individual water supply systems or individual sewage disposal systems, or both, if: (A) such individual water supply systems or individual sewage disposal systems are adjudged by the department to be adequate and safe for use during the period before a community water supply system or a community sewerage system, as the case may be, are scheduled to become available; and (B) adequate provisions are made prior to or at the time of the installation of such individual systems to permit the discontinuance of their use and the connection of the premises served thereby to the community water supply system and the community sewerage system, respectively, in as economical and convenient a way as can be foreseen. Such provision for any subdivision shall include either the posting of a bond, with satisfactory surety, to secure to the municipality the actual construction and installation of such systems at a time fixed by the municipality not in excess of [ ] years[2] and in accordance with the regulations issued hereunder and with all other state and municipal requirements, or such other arrangements as may be deemed necessary and adequate to accomplish the purposes of this section; and

(3) permit in areas where community water supply systems or community sewerage systems are not available nor required to be installed under subsection 5(c)(1) of this act, nor programmed to become available within a reasonable period of time not in excess of [ ] years,[3] individual water supply systems or individual sewage disposal systems, or both as the case may be, if such individual systems are adjudged by the department to be adequate and safe.

(d) The department is authorized to issue such additional regulations as may be necessary to carry out the provisions of this act.

(e) The department shall designate municipalities which are required to submit community plans, amendments, and revisions thereof in which applicable regulations shall apply as may be necessary to accomplish the purposes of this act. The designation shall take into consideration such factors as present and future population trends and densities, patterns of urban growth, geographic features and political boundaries, the location and plans for location of utility systems, the distribution of industrial, commercial, residential, governmental, institutional, and other activities, and the existence of any area for which comprehensive planning is being undertaken.

(f) After public hearing upon not less than sixty (60) days' prior notice published in one or more newspapers as may be necessary to assure general circulation throughout the state,[4] such regulations shall be adopted, amended, or revised.

[1] Five years is suggested as a reasonable period of time. The time period should be determined on the basis of experience in the state where this legislation is enacted.

[2] This period should be the same as that fixed in subsection 5(c)(2). See footnote 1.

[3] See footnote 2.

[4] This requirement should be consistent with the general practice for publication requirements in the state and with any state administrative procedure act which may apply.

(g) The department is hereby authorized to approve or disapprove community plans submitted in accordance with section 4. The department may approve a community plan in part provided that the part approved includes all the required elements for such plan and applies to at least ninety percent of that geographic area of the municipality for which a plan is required. When the plan is disapproved, in whole or in part, the department shall notify the municipality in writing setting forth the reasons for such disapproval. Any such disapprovals and any other actions of the department under this law are subject to judicial review as to whether they are arbitrary, capricious, or unreasonable, and otherwise as provided for under the laws of this state.[1]

(h) The department, upon request, shall provide technical assistance and consultation to municipalities in preparing and coordinating community plans required in section 4 of this act, including revisions of such plans.

(i) The department may conduct studies, surveys, investigations, research, and analyses to accomplish the purposes of this act.

(j) [Use this subsection to establish a program of state aid to municipalities for preparing and keeping current ocmmunity plans required by section 4 of this act.]

(k) For purposes of this act, the department is authorized to accept and administer federal grants.

(l) For purposes of this act, the department shall cooperate with all appropriate federal, state, and local units of government, and with appropriate private organizations.

Section 6. Conformance to Approved Community Plan. (a) The department shall prescribe the time within which each municipality within areas designated under section 5 of this act shall submit a community plan, amendment, or revision thereof. Such time for the initial submission of a community plan shall not be greater than one year from the date of designation of such area, except that the department may extend such time for good cause shown.

(b) Within six months after the submission of a community plan, amendment, or revision thereof, or six months after the time prescribed in subsection (a) of this section for the submission of a community plan, amendment, or revision thereof, whichever is earlier, the department shall approve or disapprove the community plan, amendment, or revision thereof. Any community plan, amendment, or revision thereof which has been submitted in accordance with this section and which has not been disapproved by the department within the time required by this section shall be deemed to be approved.

(c) After nine months following the submission of a community plan, amendment, or revision thereof, or nine months following the time within which a community plan, amendment, or revision thereof is required to be submitted under subsection (a) of this section, whichever is earlier, or after such later date as may be established by the department for good cause shown, no community water supply system or community sewerage system, or individual water supply system or individual sewage disposal system may be installed in those geographic areas to which such community plan, amendment, or revision thereof relates unless a community plan and any required amendments or revisions have been approved for such areas, and such system and installation are consistent with such community plan including any required amendment and revision thereof and with applicable rules and regulations.

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[1] If administrative hearings on appeals from actions of the department are not provided for under other state laws, a section on appeals and judicial review should be added.

(d) No state or local authority empowered to grant building permits or to approve subdivision plans, maps, or plats shall grant any such permit or approve any such plan, map, or plat which provides for individual or community water supply systems or sewerage systems unless such systems are found to be in conformance with the community plant, amendments, and revisions thereof approved by the department and applicable rules and regulations.[1] As a condition of such approval, the transfer of community systems to a municipality may be required by [appropriate state or municipal authority] in accordance with applicable provisions of state law as to compensation.

(e) Applicants for building permits and subdivision approvals, and water supply systems and sewerage or sewage disposal systems construction approval, shall submit to the approving authority such information in such form as may be reasonably necessary and required to show compliance with subsection (c) of this section.

(f) Any violation of subsection (c) of this section shall be punishable by a fine not to exceed $[ ].[2] The imposition of any such fine shall not bar any other relief or penalty otherwise applicable.

Section 7. Exclusion. Nothing in this act shall be construed to prohibit the installation or operation of water supply systems used solely for purposes not requiring potable water.

Section 8. Appropriation. There is appropriated $[ ] to cover necessary expenses of the department in administering this act.

Section 9. Conflict With Other Laws. The provisions of any zoning ordinance, subdivision regulation, building code, or other law or regulation of any municipality of the state establishing standards designed to afford greater protection to the public health, safety, and welfare of the community shall not be limited or superceded by regulations adopted pursuant to this act within the area over which the municipality has jurisdiction.

Section 10. Separability. [Insert separability clause.]

Section 11. Effective Date. [Insert effective date.]

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[1] See footnote 1, p. 8.

[2] Penalty under this act should be consistent with penalties under subdivision regulations and building codes within the state. A commonly used penalty is $100 with any persistent condition constituting a new violation each day it continues.

b. WATER WELL CONSTRUCTION AND PUMP INSTALLATION

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Short Title. This act shall be known and may be cited as the "state] Water Well Construction and Pump Installation Act."

Section 2. Findings and Policy. The legislature finds that improperly constructed, operated, maintained, or abandoned water wells and improperly installed pumps and pumping equipment can adversely affect the public health. Consistent with the duty to safeguard the public health of this state, it is declared to be the policy of this state to require that the location, construction, repair, and abandonment of water wells, and the installation and repair of pumps and pumping equipment conform to such reasonable requirements as may be necessary to protect the public health.

Section 3. Definitions. As used in this act:

(1) "Abandoned water well" means a well whose use has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair that continued use for the purpose of obtaining ground water is impracticable.

(2) "Construction of water wells" means all acts necessary to obtain ground water by wells, including the location and excavation of the well, but excluding the installation of pumps and pumping equipment.

(3) "Department" means the [designated agency presently having authority to regulate sanitary practices within the state, usually the state department of health].

(4) "Installation of pumps and pumping equipment" means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrance to the well and establishing seals, but not including repairs, as defined in this section, to existing installations.

(5) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to state law, or any combination thereof acting cooperatively or jointly.

(6) "Pumps" and "pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water, including, without limitation, seals and tanks, together with fittings and controls.

(7) "Pump installation contractor" means any person, firm, or corporation engaged in the business of installing or repairing pumps and pumping equipment.

(8) "Repair" means any action which results in a breaking or opening of the well seal or replacement of a pump.

(9) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, acquisition, or artificial recharge of ground water, but such term does not include an excavation made for the purpose of obtaining or for prospecting for oil, natural gas, minerals, or products of mining or quarrying, or for inserting media or repressure oil or natural gas bearing formation or for storing petroleum, natural gas, or other products.[1]

(10) "Water well contractor" means any person, firm, or corporation engaged in the business of constructing water wells.

(11) "Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.

Section 4. Scope. No person shall construct, repair, or abandon, or cause to be constructed, repaired, or abandoned, any water well, nor shall any person install, repair, or cause to be installed or repaired, any pump or pumping equipment contrary to the provisions of this act and applicable rules and regulations, provided that this act shall not apply to any distribution of water beyond the point of discharge from the storage or pressure tank, or beyond the point of discharge from the pump if no tank is employed, nor to wells used or intended to be used as a source of water supply for municipal water supply systems, nor to any well, pump, or other equipment used temporarily for dewatering purposes.

Section 5. Authority to Adopt Rules, Regulations, and Procedures. The department shall adopt, and from time to time amend, rules and regulations governing the location, construction, repair, and abandonment of water wells, and the installation, and repair of pumps and pumping equipment, and shall be responsible for the administration of this act. With respect thereto it shall:

(1) hold public hearings, upon not less than sixty (60) days' prior notice published in one or more newspapers, as may be necessary to assure general circulation throughout the state, in connection with proposed rules and regulations and amendments thereto;[2]

(2) enforce the provisions of this act and any rules and regulations adopted pursuant thereto;

(3) delegate, at its discretion, to any municipality any of its authority under this act in the administration of the rules and regulations adopted hereunder;

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[1] Some states may wish to include within the coverage of this definition seismological, geophysical, prospecting, observation, or test wells.

[2] This requirement should be consistent with the general practice for publication requirements in the state and with any state administrative procedure act which may apply.

(4) establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this act; and

(5) issue such additional regulations, and take such other actions as may be necessary to carry out the provisions of this act.

Section 6. Prior Permission and Notification. (a) Prior permission shall be obtained from the department for each of the following:

(1) the construction of any water well;

(2) the abandonment of any water well; and

(3) the first installation of any pump or pumping equipment in any well, in any geographical area where the department determines such permission to be reasonably necessary to protect the public health, taking into consideration other applicable state laws, provided that in any areas where undue hardship might arise by reason of such requirement, prior permission will not be required.

(b) The department shall be notified of any of the following whenever prior permission is not required:

(1) the construction of any water well;

(2) the abandonment of any water well;

(3) the first installation of any pump or pumping equipment in any well; and

(4) any repair, as defined in this act, to any water well or pump.

Section 7. Existing Installations. No well or pump installation in existence on the effective date of this act shall be required to conform to the provisions of subsection (a) of section 6 of this act, or any rules or regulations adopted pursuant thereto; but any well now or hereafter abandoned, including any well deemed to have been abandoned, as defined in this act, shall be brought into compliance with the requirements of this act and any applicable rules or regulations with respect to abandonment of wells; and any well or pump installation supplying water which is determined by the department to be a health hazard must comply with the provisions of this act and applicable rules and regulations within a reasonable time after notification of such determination has been given.

Section 8. Inspection. (a) The department is authorized to inspect any water well, abandoned water well, or pump installation for any well. Duly authorized representatives of the department may at reasonable times enter upon, and shall be given access to, any premises for the purpose of such inspection.

(b) Upon the basis of such inspections, if the department finds applicable laws, rules, or regulations have not been complied with, or that a health hazard exists, the department shall disapprove the well and/or pump installation. If disapproved, no well or pump installation shall thereafter be used until brought into compliance and any health hazard is eliminated.

(c) Any person aggrieved by the disapproval of a well or pump installation shall be afforded the opportunity of a hearing as provided in section 13 of this act.

Section 9. Licenses. **(a) Every person who wishes to engage in such business as a water well contractor or pump installation contractor, or both, shall obtain from the department a license to conduct such business.**

(b) The department may adopt, and from time to time amend, rules and regulations governing applications for water well contractor licenses or pump installation contractor licenses; but the department shall license, as a water well contractor or pump installation contractor, any person properly making application therefor, who is not less than twenty-one (21) years of age, is of good moral character, has knowledge of rules and regulations adopted under this act, and has had not less than two (2) years' experience in the work for which he is applying for a license; and the department shall prepare an examination which each such applicant must pass in order to qualify for such license.

(c) This section shall not apply to any person who performs labor or services at the direction and under the personal supervision of a licensed water well contractor or pump installation contractor.

(d) A county, municipality, or other political subdivision of the state engaged in well drilling or pump installing shall be licensed under this act, but shall be exempt from paying the license fees for the drilling or installing done by regular employees of, and with equipment owned by, the governmental entity.

(e) Any person who was engaged in the business of a water well contractor or pump installation contractor, or both, for a period of two (2) years immediately prior to (date of enactment) shall, upon application made within twelve (12) months of (date of enactment), accompanied by satisfactory proof that he was so engaged, and accompanied by payment of the required fees, be licensed as a water well contractor, pump installation contractor, or both, as provided in subsection (b) of this section, without fulfilling the requirement that he pass any examination prescribed pursuant thereto.

(f) Any person whose application for a license to engage in business as a water well contractor or pump installation contractor has been denied, may request, and shall be granted, a hearing in the county where such complainant has his place of business before an appropriate official of [insert the name of the hearing body designated in section 13 of this act].

(g) Licenses issued pursuant to this section are not transferable and shall expire on [ ] of each year. A license may be renewed without examination for an ensuing year by making application not later than thirty (30) days after the expiration date and paying the applicable fee. Such application shall have the effect of extending the validity of the current license until a new license is received or the applicant is notified by the department that it has refused to renew his license. After [ ] of each year, a license will be renewed only upon application and payment of the applicable fee plus a penalty of $[ ].

(h) Whenever the department determines that the holder of any license issued pursuant to this section has violated any provision of this act, or any rule or regulation adopted pursuant thereto, the department is authorized to suspend or revoke any such license. Any order issued pursuant to this subsection shall be served upon the license holder pursuant to the provisions of subsection (a) of section 12 of this act. Any such order shall become effective [ ] days after service thereof, unless a written petition requesting hearing, under the procedure provided in section 13, is filed sooner. Any person aggrieved by any order issued after such hearing may appeal therefrom in any court of competent jurisdiction as provided by the laws of this state.

(i) No application for a license issued pursuant to this section may be made withon one (1) year after revocation thereof.

Section 10. Exemptions. (a) Where the department finds that compliance with all requirements of this act would result in undue hardship, an exemption from any one or more such requirements may be granted by the department to the extent necessary to ameliorate such undue hardship and to the extent such exemption can be granted without impairing the intent and purpose of this act.

(b) Nothing in this act shall prevent a person who has not obtained a license pursuant to section 9 of this act from constructing a well or installing a pump on his own or leased property intended for use only in a single family house which is his permanent residence, or intended for use only for farming purposes on his farm, and where the waters to be produced are not intended for use by the public or in any residence other than his own. Such person shall comply with all rules and regulations as to construction of wells and installation of pumps and pumping equipment adopted under this act.

Section 11. Fees. The following fees are required:

(1) A fee of $[ ] shall accompany each application for permission required under section 6(a) of this act.

(2) A fee of $[ ] shall accompany each application for a license required under section 9 of this act.

Section 12. Enforcement. (a) Whenever the department has reasonable grounds for believing that there has been a violation of this act, or any rule or regulation adopted pursuant thereto, the department shall given written notice to the person or persons alleged to be in violation. Such notice shall identify the provision of this act, or regulation issued hereunder, alleged to be violated and the facts alleged to constitute such violation.

(b) Such notice shall be served in the manner required by law for the service of process upon person in a civil action, and may be accompanied by an order of the department requiring described remedial action, which if taken within the time specified in such order will effect compliance with the requirements of this act and regulations issued hereunder. Such order shall become final unless a request for hearing as provided in section 13 of this act is made within [ ] days from the date of service of such order. In lieu of such order, the department may require the person or persons named in such notice to appear at a hearing, at a time and place specified in the notice.

Section 13. Hearing. [Unless already prescribed in state law, this section should be used to specify procedures for administrative hearing.]

Section 14. Judicial Review. [Unless already prescribed in state law, this section should be used to specify procedures for judicial review.]

Section 15. Penalties. Any person who violates any provision of this act, or regulations issued hereunder, or order pursuant hereto, shall be subject to a penalty of $[ ]. Every day, or any part thereof, in which such violation occurs shall constitute a separate violation.

Section 16. Conflict with Other Laws. The provisions of any law, or regulation of any municipality establishing standards affording greater protection to the public health or safety, shall prevail within the jurisdiction of such municipality over the provisions of this act and regulations adopted hereunder.

Section 17. Separability. [Insert separability clause.]

Section 18. Effective Date. [Insert effective date.]

c. INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

[Title should conform to state requirements.]

(Be it enacted, etc.)

Section 1. Short Title. This act shall be known and may be cited as the "Individual Sewage Disposal Systems Act."

Section 2. Findings and Policy. (a) The legislature finds that properly planned, constructed, and installed individual sewage disposal systems:

(1) promote the health and welfare of citizens of this state by preventing the pollution of ground and surface water;

(2) prevent nuisances;

(3) eliminate hazards to the public health by minimizing pollution of water supplies and hazards to recreational areas; and

(4) minimize disease transmission potential.

(b) It is, therefore, declared to be the public policy of this state to eliminate and prevent health and safety hazards by regulating the design, construction, installation, operation, and maintenance of individual sewage disposal systems and the proper planning thereof; authorizing the issuance of permits for the construction, alteration, repair or extension of individual sewage disposal systems; licensing of installers of individual sewage disposal systems; requiring registration of those who clean systems and dispose of wastes therefrom; and, providing penalties for violations.

Section 3. Definitions. As used in this act:

(1) "Community sewerage system" means any system, whether publicly or privately owned, serving two or more individual lots, for the collection and disposal of sewage or industrial wastes of a liquid nature, including various devices for the treatment of such sewage or industrial wastes.

(2) "Department" means the [designated agency presently having authority to regulate sanitary practices within the state, usually the state department of health].

(3) "Industrial wastes" means liquid wastes resulting from the processes employed in industrial and commercial establishments.

(4) "Individual sewage disposal system" means a single system of sewage treatment tanks and disposal facilities serving only a single lot.

(5) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to state law, or any combination thereof, acting cooperatively or jointly.

(6) "Person" means any institution, public or private corporation, individual, partnership, or other entity.

(7) "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects with the bacteriological and chemical quality conforming to applicable standards of the department.[1]

(8) "Seepage pit" means a covered pit with open-jointed lining through which septic tank effluent may seep or leach into surrounding ground.

(9) "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system or part thereof, exclusive of industrial wastes, and is designed and constructed so as to separate solids from the liquid, digest organic matter through a period of detention, and allow the liquids to discharge into the soil outside of the tank through a system of open joint or perforated piping, or a seepage pit.

Section 4. Scope. No person shall construct, alter, repair, or extend, or cause to be constructed, altered, repaired, or extended any individual sewage disposal system contrary to the provisions of this act and applicable rules and regulations.

Section 5. Authority to Adopt Rules, Regulations, and Procedures. The department shall have general supervision and authority over the design, construction, installation, and operation of individual sewage disposal systems, and shall be responsible for the administration of this act. With respect thereto, it shall:

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[1] In the absence of available state standards, Public Health Service Drinking Water Standards (PHS Pub. No. 956) should apply.

(1) adopt, and from time to time amend, rules and regulations governing the design, construction, installation, and operation of individual sewage disposal systems in order that the wastes from such systems –

(i) will not pollute any potable water supply, or the waters of any bathing beach, shellfish growing areas,[1] or stream used for public or domestic water supply purposes, or for recreational purposes;

(ii) will not give rise to a public health hazard by being accessible to insects, rodents, or other possible carriers which may come into contact with food or potable water, or by being accessible to human beings; and

(iii) will not give rise to a nuisance due to odor or unsightly appearance;

(2) hold public hearings, upon not less than sixty (60) days' prior notice published in one or more newspapers, as may be necessary to assure general circulation throughout the state, in connection with proposed rules and regulations and amendments thereto;[2]

(3) enforce the provisions of this act and any rules and regulations adopted pursuant thereto;

(4) delegate, at its discretion, to any municipality any of its authority under this act in the administration of the rules and regulations adopted hereunder;

(5) issue permits, licenses, registration, and other documents, including the establishment of procedures and forms for the submission, review, approval, and rejection of applications required under this act; and

(6) issue such additional regulations, and take such other actions as may be necessary to carry out the provisions of this act.

Section 6. Existing Installations. No individual sewage disposal system in existence on the effective date of this act shall be required to conform to the design, construction, and installation provisions of this act, or any rules or regulations adopted pursuant thereto; but any individual sewage disposal system being used which is determined by the department to be a health hazard must conform with the provisions of this act and applicable rules and regulations within a reasonable time after notification of such determination has been given.

Section 7. Inspections. (a) The municipality is hereby authorized and directed to make inspections of individual sewage disposal systems as may be necessary to determine substantial compliance with this act and regulations adopted hereunder, and such systems shall not be used unless approved by the municipality. Upon the basis of such inspections, the department shall either approve or disapprove the individual sewage disposal system, and if disapproved the system shall not be used.

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[1] Optional with locality.

[2] This requirement should be consistent with the general practice for publication requirements in the state and with any state administrative procedure act which may apply.

(b) It shall be the duty of the holder of a permit issued pursuant to section 8 of this act to notify the municipality when the installation is ready for inspection and it shall be the duty of the owner and occupant of the property to give the municipality free access to the property at reasonable times for the purpose of making such inspections as are necessary.

(c) In the event an inspection is not made upon notification of the municipality that the installation is completed and ready for inspection, the system shall be deemed approved after [ ] days[1] from date of official notification.

(d) Any person aggrieved by the disapproval of an individual sewage disposal system installation shall be afforded the opportunity of a hearing as provided in section 13 of this act.

Section 8. Permits. (a) It shall be unlawful for any person to construct, alter, repair, or extend individual sewage disposal systems unless he holds a valid permit[2] issued by the municipality in the name of such person for the specific construction, alteration, repair, or extension proposed, except that emergency repairs may be undertaken without prior issuance of a permit, provided a permit is subsequently obtained within [ ] days after the repairs are made.

(b)[3] Permits shall be issued only to licensed installers as provided in section 9 of this act, or to an owner or lessee of a lot on the condition that the said owner or lessee performs all labor in connection with the installation of the individual sewage disposal system on such lot.

(c) All applications for permits shall be made on a form which includes such information as may be required by the municipality to establish conformance with the provisions of this act and any regulations adopted hereunder.

(d) Following determination of conformance with the requirements of this act and regulations issued pursuant thereto, the municipality to which application has been made shall issue a permit to the applicant.

(e) A permit for the construction, alteration, repair, or extension of an individual sewage disposal system shall be refused where community sewerage systems are reasonably available or in instances where the issuance of such permit is in conflict with other applicable laws and regulations.

(f) Any person whose application for a permit under this act has been denied shall be notified in writing as to the reasons for denial, and such person may request and shall be granted a hearing on the matter in accordance with section 13 of this act.

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[1] Three (3) days are suggested to prevent damage to an open system.

[2] The permit issued by the municipality is in addition to the building permit usually required and would be obtained prior to construction, alteration, repair, and extension of the residence or facility to be served.

[3] Optional provision, see section 9.

Section 9. Licensing of Installers.[1] (a) Every person engaged in the business of installing individual sewage disposal systems within the state shall obtain from the department a license to conduct such business.

(b) The department may adopt, and from time to time amend, rules and regulations estabishing qualifications and minimum standards of experience and knowledge for installers. The department shall license as an installer any person properly making application therefore, who is not less than twenty-one (21) years of age, has knowledge of rules and regulations adopted under this act, and has had not less than two (2) years' experience in installing individual sewage disposal systems.

(c) An application for a license as an installer shall be made in writing in a form prescribed by the department, and shall include such information as the department deems necessary to determine the qualifications of the applicant.

(d) Any person whose application for a license under this section has been denied shall be notified in writing as to the reasons for denial, and such person may request, and shall be granted, a hearing on the matter in accordance with section 13 of this act.

(e) Whenever the department determines that the holder of any license issued pursuant to this section has violated any provision of this act, or any rule or regulation adopted pursuant thereto, the department is authorized to suspend or revoke any such license. Any order issued pursuant to this subsection shall be served upon the license holder pursuant to the provisions of section 12 of this act. Any such order shall become effective [ ] days after service thereof, unless a written petition requesting hearing, under the procedure provided in section 13, is filed sooner. Any person aggrieved by any order issued after such hearing may appeal therefrom in any court of competent jurisdiction as provided by the laws of this state.

(f) No application for a license issued pursuant to this section may be made within one (1) year after revocation thereof.

Section 10. Required Registration for Cleaning Systems and Disposal of Wastes. (a) The provisions of this section shall not apply to any municipality, sanitation district, or sewer maintenance district, or to any agency or institution of the state or federal government.

(b) It shall be unlawful for any person to carry on, or engage in the business of cleaning individual sewage disposal systems, or to dispose of the wastes therefrom unless duly registered by the department for the carrying on of said business.

(c) All applications for registration under this section shall be made in writing in a form prescribed by the department, and shall include such information as the department deems necessary to determine the qualification of the applicant, including a knowledge of the regulations.

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[1] Optional provision.

(d) Any person whose application for registration under this section has been denied shall be notified in writing as to the reasons for denial, and such person may request, and shall be granted, a hearing on the matter in accordance with section 13 of this act.

(e) Whenever the department determines that the holder of any registration issued pursuant to this section has violated any provision of this act, or any rule or regulation adopted pursuant thereto, the department is authorized to suspend or revoke any such registration. Any order issued pursuant to this subsection shall be served upon the registration holder pursuant to the provisions of section 12 of this act. Any such order shall become effective [ ] days after service thereof, unless a written petition requesting hearing, under the procedure provided in section 13, is filed sooner. Any person aggrieved by any order issued after such hearing may appeal therefrom in any court or competent jurisdiction as provided by the laws of this state.

(f) No application for a registration issued pursuant to this section may be made withon one (1) year after revocation thereof.

Section 11. Schedule of Fees. The following fees for permits, licenses, and registration are required:

Individual Sewage Disposal System	*Fee*
Construction (permit)	---
Alteration (permit)	---
Repair (permit)	---
Extension (permit)	---
Installers (license)	---
Cleaners (registration)	---

Section 12. Enforcement. (a) Whenever the department has reasonable grounds for believing that there has been a violation of this act, or any rule or regulation adopted pursuant thereto, the department shall give written notice to the person or persons alleged to be in violation. Such notice shall identify the provision of this act, or regulation issued hereunder, alleged to be violated and the facts alleged to constitute such violation.

(b) Such notice shall be served in the manner required by law for the service of process upon person in a civil action, and may be accompanied by an order of the department requiring remedial action, which if taken within the time specified in such order will effect compliance with the requirements of this act and regulations issued hereunder. Such order shall become final unless a request for hearing as provided in section 13 of this act is made within [ ] days from the date of service of such order. In lieu of such order, the department may require the person or persons named in such notice to appear at a hearing, at a time and place specified in this notice.

Section 13. Hearing. [Unless already prescribed in state law, this section should be used to specify procedures for administrative hearing.]

Section 14. Judicial Review. [Unless already prescribed in state law, this section should be used to specify procedures for judicial review.]

Section 15. Penalties. (a) Any person who fails to comply with any provision of this act, or regulations issued hereunder, or order pursuant hereto, shall be subject to a penalty of $[ ]. Every day, or any part thereof, in which such violation occurs shall constitute a separate violation.

(b) The department is authorized to require the property owner to take necessary action to correct a malfunctioning individual sewage disposal system within [ ] days of being notified[1] after which each day's failure to take corrective action shall be punishable by a fine of not less than $[ ] nor more than $[ ].

Section 16. Conflict with Other Laws. The provisions of any law or regulation of any municipality establishing standards affording greater protection to the public health or safety shall prevail within the jurisdiction of such municipality over the provisions of this act and regulations adopted hereunder.

Section 17. Separability. [Insert separability clause.]

Section 18. Effective Date. [Insert effective date.]

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[1] In accordance with applicable state procedural requirements.

88-22-00

LEGISLATIVE JURISDICTION OVER FEDERAL LANDS WITHIN THE STATES

In 1961, in its report on *State and Local Taxation of Privately Owned Property Located on Federal Areas,* the Advisory Commission on Intergovernmental Relations recommended that Congress authorize and direct federal agencies to cede to states legislative jurisdiction over government-owned properties as rapidly and extensively as consistent with their essential program needs.[1] At that time, the Commission also recommended that states enact the legislation recommended by the Special Committee on Legislative Jurisdiction of the Council of State Governments. This proposal, set forth below, was included in the 1959 edition of *Suggested State Legislation* prepared by the Council of State Governments.

The federal government holds vast amounts of real property within the states. In some places, particularly in the West, the acreages in federal ownership constitute a major percentage of the total area of the state. Elsewhere the extent of federal holdings is not so great, but it is still significant. Post offices, federal office facilities, national parks and other recreational or historic areas, military installations, veterans' administration hospitals, and a variety of other establishments are to be found throughout the country. These federal properties are held in a number of different ways, generally classified as follows:

1. *Proprietorial status.* Property held by the federal government in this way is controlled in the same way as any private owner might control his land. In addition, the administering agency may claim certain immunities necessarily connected with the conduct of the governmental purpose for which the land is held.

2. *Concurrent jurisdiction.* Under this arrangement, the federal government has power to make and enforce laws for the governance of the area and the people on it. At the same time, however, the state also has power to make such laws and enforce them.

3. *Partial jurisdiction.* Properties held in partial jurisdiction are lands over which the federal government has the exclusive right to make and enforce certain specified types of law for the area and its people of the type normally enacted and enforced by the state. Partial jurisdiction is really not a single category of jurisdictional status at all, but may be used to describe a wide variety of arrangements.

4. *Exclusive jurisdiction.* Under this arrangement, the federal government exercises full authority to make and enforce laws and the state has no jurisdiction at all, either over the area or the people on it. In the strict sense, the term "exclusive jurisdiction" is a misnomer because, at the very least, the states have reserved (and the federal government has recognized) the power to serve and execute process. However, where the jurisdiction of the federal government is said to be exclusive, the state is virtually excluded from control of the area or of the people on it. Such services as the state or its local subdivisions may choose to provide and such authority as they may purport to exercise are on a voluntary basis only, and not as a result of any right in the premises.

The suggested legislation which follows does not deal directly with any problems which may arise out of federal holdings in proprietorial status. Rather, it is addressed to the difficulties which have arisen and grown widespread in cases of concurrent, partial or exclusive jurisdiction exercised by the federal government. The problems are of two types. In the first place, owing to the largely unplanned and uncoordinated fashion in which jurisdictional transfers have taken place in the past, there are a surprisingly large number of federal

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[1] Efforts to implement the Commission's 1961 recommendations to Congress on retrocession of legislative jurisdiction over federal enclaves were unsuccessful. In 1966, the Commission reviewed the position adopted in 1961 and recommended that Congress amend the Buck Act (4 USC 105-110) to permit the imposition and collection of property taxes on privately owned real and personal property within federal areas. A bill that would have implemented this recommendation failed to pass in 1966. A similar bill (HR 3892) was introduced in the first session of the 90th Congress (1967), but has not been enacted.

areas whose jurisdictional status is either entirely unknown or subject to some degree of doubt; in numerous instances different portions of individual federal areas unwarrantably have different jurisdictional statuses; and the jurisdictional statuses of many federal areas are inconsistent with the present uses of the areas. Secondly, private persons, private property and private transactions on such areas are often unwarrantably immune from state laws which, as a matter of sound policy, should apply to them and concomitantly are denied services provided by the state and local governments for other people and property.

Section 1 of the suggested legislation is designed to remedy the first of these difficulties, at least with respect to transfers of jurisdiction occurring after passage of the act. It provides a procedure for the making of a public record of each transfer at the time when it occurs. It also provides a means whereby the state can make a property study of the ramifications of each transfer before consenting to it, thereby providing some degree of assurance that transfers will be equitable from the state's point of view.

Section 2 of the act lays down three minimum conditions which the federal government must meet in its law if a transfer of jurisdictional status is to take place: (1) the state must have the right to tax private persons; private property and private transactions on the federal enclave; (2) a return of legislative jurisdiction to the state must be so effected as to give the state the same measure of control over the area with respect to the jurisdiction returned as it would have had if the enclave had never been within the legislative jurisdiction of the federal government to the exclusion of state authority; and (3) the state must retain the right to serve and execute process. These requirements are already met in part by federal law. However, some of this law is case law and so subject to varying court interpretations. Making them statutory requirements in state law will assure that the appropriate state officials are satisfied that federal law at the time of the transfer already meets these minimum conditions adequately or that, if it does not, the federal statute by which the transfer is made or accepted on the part of the United States contains specific provisions to meet them.

Section 3 of the suggested act is meant only to make it clear that transfers of jurisdiction back to the state which occur by operation of law are not foreclosed by this legislation. The most notable type of case in this category is the return of legislative jurisdiction to the state which occurs as a normal incident of the sale of a piece of federal land to a private individual.

A comprehensive federal statute establishing the method for and consequences of transfers of legislative jurisdiction on the part of the federal government is much needed. In fact, it had been hoped that such a federal statute would be in force by now. The report of the federal Interdepartmental Committee on Jurisdiction Over Federal Areas Within the States recognized the need for federal as well as for state legislation. Part I of this report is a survey of the situation from the point of view of the federal government's interests. Part II is a textbook of the law of legislative jurisdiction. Together these two volumes present much useful information on the entire subject. However, both the proposals for federal and state legislation contained in this report proved inadequate in some respects. Consequently, the federal Interdepartmental Committee and a committee of the Council of State Governments cooperatively evolved new legislation. The resulting draft of a federal act was introduced into the 85th Congress but, owing to some difficulties of a political nature, did not succeed of enactment; nor have similar revisions in subsequent sessions of Congress. Nevertheless, it continues to be important that each state improve the jurisdictional situation within its own borders. In fact, the continued absence of a satisfactory federal statute makes this even more imperative. Under present conditions, state action seems to be the most promising way of dissipating at least a part of the present confusion. Moreover, the large federal holdings and transfers of legislative jurisdiction which must inevitably occur with respect to both old and new holdings of the federal government make it urgent that each state have a clear law on the subject which will protect its own interests and those of its people. In this connection, it should be noted that the suggested legislation offered below has been drafted so as to be workable with or without complementary federal legislation.

Finally, it may be appropriate to point out that this legislation does not provide for, and is in no way related to, any transfer of ownership of land or any other property. It concerns only the transfer of and exercise of state-type legislative jurisdiction over federal real property within the states.

In almost all instances the reforms contemplated by the suggested legislation can be accomplished by statute. However, several of the states have constitutional provisions requiring that the federal government take exclusive legislative jurisdiction over lands which it acquires. These provisions were designed to meet requirements of federal statutes and policy which no longer prevail. Nevertheless, in those few states where they exist, these constitutional provisions would make impossible the enactment of the suggested legislation in anything like the form proposed below. It should also be noted that any other requirements for the transfer or exercise of legislative jurisdiction over federal lands which may now be on the statute books of individual states are not necessarily meant to be superseded by the suggested act. States considering enactment of this proposal should examine existing statutes on the subject to see how they wish to fit it into their existing pattern.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion only: "An Act providing for the transfer of legislative jurisdiction over federal lands from or to this state and establishing the necessary conditions for such transfers and for the exercise of jurisdiction thereafter."]

(Be it enacted, etc.)

Section 1. (a) In order to acquire all, or any measure of, legislative jurisdiction of the kind involved in Article I, Section 8, Clause 17 of the Constitution of the United States, over any land or other area; or in order to relinquish such legislative jurisdiction, or any measure thereof, which may be vested in the United States; the United States acting through a duly authorized department, agency or officer, shall file a notice of intention to acquire or relinquish such legislative jurisdiction (hereinafter called notice), together with a sufficient number of duly authenticated copies thereof to meet the recording requirements of section 1(c) of this act, with the governor. The notice shall contain a description adequate to permit accurate identification of the boundaries of the land or other area for chich the change in jurisdictional status is sought and a precise statement of the measure of legislative jurisdiction sought to be transferred. Immediately upon receipt of the notice, the governor shall furnish the attorney general with a copy thereof and shall request his comments and recommendations thereon.

(b) The governor shall transmit said notice together with his comments and recommendations, if any, and the comments and recommendations of the attorney general, if any, to the next session of the legislature which shall be constitutionally competent to consider the same. Unless prior to the expiration of the legislative session to which said notice is transmitted as provided herein the legislature has adopted a [resolution] [act] approving the transfer of legislative jurisdiction as proposed in said notice, the said transfer shall not be effective.

(c) The governor shall cause a duly authenticated copy of notice and [resolution] [act] to be recorded in the [land records office] of the [county] where the land or other area affected by the transfer of jurisdiction is situated, and upon such recordation the transfer of jurisdiction shall take effect. If the land or other area shall be situated in more than one [county], a duly authenticated copy of the notice and [resolution] [act] shall be recorded in the [land records office] of each such [county].

(d) The governor shall cause copies of all documents recorded pursuant to this act to be filed with the [secretary of state].

Section 2. **In no event shall any transfer of legislative jurisdiction between the United States and this state take effect nor shall the governor transmit any notice proposing such a transfer pursuant to section 1(b) of this act, unless under the applicable laws of the United States:**

(a) This state shall have jurisdiction to tax private persons, private transactions, and private property, real and personal, resident, occurring, or situated within such land or other area to the same extent that this state has jurisdiction to tax such persons, transactions, and property resident, occurring, or situated generally within this state.

(b) Any civil or criminal process[1] lawfully issued by competent authority of this state or any of its subdivisions, may be served and executed within such land or other area to the same extent and with the same effect as such process may be served and executed generally within this state; provided only that the service and execution of such process within land or other areas over which the federal government exercises jurisdiction shall be subject to such rules and regulations issued by authorized officers of the federal government, or of any department, independent establishment or agency thereof, as may be reasonably necessary to prevent interference with the carrying out of federal functions.

(c) This state shall exercise over such land or other area the same legislative jurisdiction which it exercises over land or other areas generally within this state, except that the United States shall not be required to forego such measure of exclusive legislative jurisdiction as may be vested in or retained by it over such land or other area pursuant to this act, and without prejudice to the right of the United States to assert and exercise such concurrent legislative jurisdiction as may be vested in or retained by it over such land or other area.

Section 3. **Nothing in this act shall be construed to prevent or impair any transfer of legislative jurisdiction to this state occurring by operation of law.**

Section 4. Effective Date. **[Insert effective date.]**

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[1] In states where a ticket for violation of a traffic ordinance or illegal parking is not considered process, the state may want to include language to deal with this situation.

88-30-00

SECURING AND PRESERVING "OPEN SPACE"

Legislation is suggested to states which would (a) provide for acquisition by the states of interests or rights in real property which could include, among other interests or rights, conservation easements designed to remove from urban development key tracts of land in and around existing and potential metropolitan areas and (b) authorize local units of government to acquire interest or rights in real property within existing metropolitan areas for the purpose of preserving appropriate open areas and spaces within the pattern of metropolitan development.

It is widely recognized that, for economic, conservation, health, and recreational purposes, adequate amounts of open land need to be retained within metropolitan areas as the spread of population reaches ever outward from the central city. In some instances, acquisition and preservation of open land areas could be justified on the basis of watershed protection alone: many of the areas most likely to be selected for preservation would be stream valleys; the protection of some of these valleys from intensive urban development is essential from the standpoint of drainage, flood control, and water supply. The need for adequate amounts of open land for parks and recreational purposes is also obvious. Finally, provision of adequate open space within the general pattern of metropolitan development helps to prevent the spread of urban blight and deterioration. All of these are compelling economic and social reasons for appropriate steps by various levels of government to acquire and preserve open land.

The states should equip themselves to take postitive action in the form of direct acquisition of land or property rights by the state itself, especially in (a) the emerging and future areas of urban development and (b) those emergency stituations within existing metropolitan areas where, for one reason or another, local governments cannot or will not take the necessary action. Also recommended is the enactment of state legislation authorizing (where such authority does not now exist) such action by local governments. Additionally, zoning powers can be employed in a variety of ways to achieve some of the objectives cited above. Envisaged in these proposals is not only outright acquisition of land but also the acquistiion of interests less than the fee which will serve the purpose of preserving the openness and undeveloped character of appropriate tracts of land. By the acquisition of easements, development rights and other types of interests in real property less than the fee land can continue to be used for agricultural and other nonurban purposes but protected against subdivision and other types of urban development. This type of direct approach is often more effective and subject to less difficulty than are various tax incentive plans designed to encourage owners of farmland to withhold their land from real estate developers and subdividers.

The suggested legislation which follows authorizes public bodies to acquire real property or any interests or rights in real property that would provide a means for the preservation or provision of permanent open-space land or to designate real property in which they have an interest for open-space land use. The public bodies would also be authorized to accept and utilize federal assistance for their permanent open-space land programs. The suggested legislation has been prepared by the State and Local Relations Division, Office of General Counsel, Housing and Home Finance Agency, Washington, D. C., to assist state and local officials. It can be used as a pattern in drafting state legislation to make states and public bodies eligible for federal assistance under the federal open-space land program.

The term "open-space land" is defined to mean land which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

The use of real property for permanent open-space land is required to conform to comprehensive planning being actively carried on for the urban area in which the property is located. The term "comprehensive planning" would be defined to include the requirements in the federal law to make a public body eligible for grants. These are (1) preparation of long-range general physical plans for the development of the

urban area in which the open-space land is located, (2) programing and financing plans for capital improvements for the area, (3) coordination of planning in the area, and (4) preparation of regulatory and administrative measures in support of the comprehensive planning. A section is included in the bill authorizing comprehensive planning for urban areas and the establishment of planning commissions for this purpose. This section would not be needed in states that have adequate planning laws.

The provisions of the draft bill are broad enough to authorize acquisition and designation of real property which has been developed, and its clearance by the public body for use as permanent open-space land. This provision is broader than the present federal open-space law since federal grants cannot be given under that law to assist acquisition and clearance of completely developed property. However, some localities may desire this authority in order to provide open space in central cities or other places where there is a need for more open-space land.

The bill prohibits conversion or diversion of real property from present or proposed open-space land use unless equivalent open-space land is substituted within one year for that converted or diverted.

Where title to land is retained by the owner subject to an easement or other interest of a public body under the proposed legislation, tax assessments would take into consideration the change in the market value of the property resulting from the easement or other interest of the public body.

A public body is given for the purposes of the act the power to use eminent domain, to borrow funds, to accept federal financial assistance, and to maintain and manage the property. It would also be authorized to act jointly with other public bodies to accomplish the purposes of the act. Public bodies that have taxing powers and authority to issue general obligations could use those powers for open-space land.

This draft is silent on several questions of state policy in relations with their subdivisions. It is suggested that in considering this draft, states will want to determine whether any additional provisions should be added dealing with state approvals, review of local grant applications, and related matters.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion:
"Any act to provide for the acquisition and designation of real property by
the state, counties, and municipalities[1] for use as permanent open-space
land."]

(Be it enacted, etc.)

Section 1. Short Title. **This act shall be known and may be cited as the "Open-Space Land Act."**

Section 2. Findings and Purposes. **The legislature finds that the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments; that the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living; that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park,**

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[1] If any specific public bodies, such as park authorities, or certain districts, are included in the definition of "public body" in section 9 (a) and in that manner authorized to carry out the purposes of the bill, appropriate reference to the public bodies should be inserted in the title at this point.

recreational, historic and scenic areas, and to conserve land and other natural resources; that the acquisition or designation of interests and rights in real property by public bodies to provide or preserve permanent open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state; and that the exercise of authority to acquire or designate interests and rights in real property to provide or preserve permanent open-space land and the expenditure of public funds for these purposes would be for a public purpose.

Pursuant to these findings, the legislature states that the purposes of this act are to authorize and enable public bodies to provide and preserve permanent open-space land in urban areas in order to assist in the solution of the problems and the attainment of the objectives stated in its findings.

Section 3. Definitions. The following terms whenever used or referred to in this act shall have the following meanings unless a different meaning is clearly indicated by the context:

(a) "Public body" means [ ].[1]

(b) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

(c) "Open-space land" means any land in an urban area which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

(d) "Comprehensive planning" means planning for development of an urban area and shall include: (1) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development; (2) programing and financing plans for capital improvements; (3) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and (4) preparation of regulatory and administrative measures in supporting of the foregoing.

Section 4. Acquisition and Preservation of Real Property for Use as Permanent Open-Space Land. To carry out the purposes of this act, any public body may (1) acquire by purchase, gift, devise, bequest, condemnation, grant, or otherwise title to or any interests or rights in real property that will provide a means for the preservation or provision of permanent open-space land and (2) designate any real property in which it has an interest to be retained and used for the preservation and provision of permanent open-space land. The use of the real property for permanent open-space land shall conform to comprehensive planning being actively carried on for the urban area in which the property is located.

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[1] "Public body" can be defined as desired by the proponents of the bill to include any or all of the following: the state, counties, cities, towns, or other municipalities, and any other public bodies they wish to specify; such as park authorities, or other specific authorities or districts. If any specified public body (other than the state or cities, towns or other municipalities) included in the definition has, under another law, taxing powers or other financing powers that could be used for the purposes of open-space land a subsection (c) should be added to section 5 to authorize that public body to use those powers for the purposes of this act.

Section 5. Conversion and Conveyances. (a) No open-space land, the title to, or interest or right in which has been acquired under this act or which has been designated as open-space land under the authority of this act shall be converted or diverted from open-space land use unless the conversion or diversion is determined by the public body to be (1) essential to the orderly development and growth of the urban area, and (2) in accordance with the program of comprehensive planning for the urban area in effect at the time of conversion or diversion. Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as permanent open-space land shall be substituted within a reasonable period not exceeding one year for any real property converted or diverted from open-space land use. The public body shall assure that the property substituted will be subject to the provisions of this act.

(b) A public body may convey or lease any real property it has acquired or which has been designated for the purposes of this act. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subject (a) of this section.

Section 6. Exercise of Eminent Domain. For the purpose of this act, any public body may exercise the power of eminent domain in the manner provided in [ ] and acts amendatory or supplemental to those provisions. No real property belonging to the United States, the state, or any political subdivision of the state may be acquired without the consent of the respective governing body.

Section 7. General Powers. (a) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this act, including the following powers in addition to others granted by this act:

(1) to borrow funds and make expenditures necessary to carry out the purpose of this act;

(2) to advance or accept advances of public funds;

(3) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required and to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal

laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this act;

(4) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act;

(5) in connection with the real property acquired or designated for the purposes of this act, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities or structures that may be necessary to the provision, preservation, maintenance and management of the property as open-space land;

(6) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(7) to demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

(8) to exercise any or all of its functions and powers under this act jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this state, and to enter into agreements for joint or cooperative action.

(b) For the purposes of this act, the state, or a city, town, other municipality, or county may:

(1) appropriate funds;

(2) levy taxes and assessments;

(3) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(4) exercise its powers under this act through a board or commission, or through such office or officers as its governing body by resolution determines, or as the governor determines in the case of the state.

Section 8. Planning for the Urban Area.[1] The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities. Funds may be appropriated and made available for the comprehensive planning, and financial or other assistance from the federal government and any other public or private sources may be accepted and utilizes for the planning.

Section 9. Taxation of Open-Space Land. Where an interest in real property less than the fee is held by a public body for the purposes of this act, assessments made on the property for taxation shall reflect any change in the market value of the property which may result from the interest held by the public body. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other property owned by the public body.

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[1] This section is not necessary if the planning laws of the state provide adequate authority.

Section 10. Separability; Act Controlling. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

APPENDIX

Summary of the Council of State Governments' *Analytical Index to Suggested State Legislation (1941-1970)*

Following is the first and second level subject matter classifications of the CSG Index which in complete form lists: (1) all draft bills in CSG's *Suggested State Legislation* since 1941 except those which clearly have been rendered obsolete; (2) Uniform Laws proposed prior to 1941 by the National Conference of Commissioners on Uniform State Laws and still advocated by the Conference; and (3) draft bills proposed by the Advisory Commission on Intergovernmental Relations.

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Conduct of Business	74-00-00
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Mining	85-00-00
Recreation	86-00-00
Water Resources	87-00-00
Land	88-00-00
Other	89-00-00

☆ U. S. GOVERNMENT PRINTING OFFICE : 1970 O - 395-529 (4438)

PUBLISHED REPORTS OF THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS[1]

Coordination of State and Federal Inheritance, Estate and Gift Taxes. Report A-1, January 1961. 134 pages, printed.

Investment of Idle Cash Balances by State and Local Governments. Report A-3, January 1961. 61 pages (out of print; summary available).

Governmental Structure, Organization, and Planning in Metropolitan Areas. Report A-5, July 1961, 83 pages; U. S. House of Representatives, Committee on Government Operations. Committee Print, 87th Cong. 1st Sess.

State and Local Taxation of Privately Owned Property Located on Federal Areas. Report A-6, June 1961. 34 pages, offset (out of print; summary available).

Periodic Congressional Reassessment of Federal Grants-in-Aid to State and Local Governments. Report A-8, June 1961. 67 pages, offset (reproduced in Appendix of *Hearings on S. 2114 Before the U. S. Senate, Subcommittee on Intergovernmental Relations of the Committee on Government Operations.* January 14, 15 and 16, 1964 88th Cong. 2d Sess.)

Local Nonproperty Taxes and the Coordinating Role of the State. Report A-9, September 1961. 68 pages, offset.

Alternative Approaches to Governmental Reorganization in Metropolitan Areas. Report A-11, June 1962. 88 pages, offset.

Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas. Report A-13, October 1962. 135 pages, offset.

Transferability of Public Employee Retirement Credits Among Units of Government. Report A-16, March 1963. 92 pages, offset.

*_The Role of the States in Strengthening the Property Tax._ Report A-17, June 1963. Vol. I (187 pages) and Vol. II (182 pages), printed. $1.25 ea.

Statutory and Administrative Controls Associated with Federal Grants for Public Assistance. Report A-21, May 1964. 108 pages, printed.

The Problem of Special Districts in American Government. Report A-22, May 1964. 112 pages, printed.

The Intergovernmental Aspects of Documentary Taxes. Report A-23, September 1964. 29 pages, offset.

State-Federal Overlapping in Cigarette Taxes. Report A-24, September 1964. 62 pages, offset.

*_Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs._ Report A-25, January 1965, 253 pages, offset. $1.25.

Relocation: Unequal Treatment of People and Businesses Displaced by Governments. Report A-26, January 1965. 141 pages, offset.

Federal-State Coordination of Personal Income Taxes. Report A-27, October 1965. 203 pages, offset.

Building Codes: A Program for Intergovernmental Reform. Report A-28, January 1966, 103 pages, offset.

*_Intergovernmental Relations in the Poverty Program._ Report A-29, April 1966. 278 pages, offset. $1.50.

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*_Fiscal Balance in the American Federal System._ Report A-31, October 1967. Vol. 1, 385 pages offset. $2.50; Vol. 2 _Metropolitan Fiscal Disparities,_ 410 pages offset. $2.25.

*_Urban and Rural America: Policies for Future Growth._ Report A-32, April 1968. 186 pages, printed. $1.25.

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[1] Single copies of reports may be obtained without charge from the Advisory Commission on Intergovernmental Relations. Washington, D. C. 20575.

* Multiple copies of items may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402.